

## **APPENDIX E**

### **TERMS AND CONDITIONS**

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# APPENDIX E - Model Terms and Conditions

## SECTION I

### GENERAL TERMS AND CONDITIONS GOODS AND NONPROFESSIONAL SERVICES

These General Terms and Conditions are recommended for use in written solicitations issued by Community Services Boards unless changed, deleted or revised by your legal advisor. For service contracts the last three clauses R, S and T are normally not applicable and can be omitted.

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GENERAL TERMS AND CONDITIONS  
GOODS AND NONPROFESSIONAL SERVICES

- A. PROCUREMENT REGULATIONS: This solicitation is subject to the provisions of the purchasing regulations of the \_\_\_\_\_ Community Services Board and any revisions thereto, which are hereby incorporated into this contract in their entirety. A copy of these regulations are available for review at the purchasing office and, in addition, a copy can be obtained from the CSB web site or by calling \_\_\_\_\_.

*(NOTE: CSBs must adopt rules and regulations regarding procurement. A sample "Vendors' Guide to CSB Procurement Regulations" is found in Appendix B of this manual and may be revised in accordance with the regulations adopted by your CSB.)*

- B. APPLICABLE LAWS AND COURTS: This solicitation and any resulting contract shall be governed in all respects by the laws of the Commonwealth of Virginia and any litigation with respect thereto shall be brought in the courts of the Commonwealth. The Contractor shall comply with applicable federal, state and local laws and regulations.

C. COMPLIANCE:

1. GENERAL COMPLIANCE PROVISION: By signing this (Bid/Proposal), the (Bidder/Offeror) certifies that it is and will remain in full compliance with:

The Federal Civil Rights Act of 1964, as amended.

The Federal Immigration Reform and Control Act of 1986.

The Virginia Fair Employment Act of 1975, as amended, where applicable.

The Virginia Conflict of Interest Act.

The Virginians With Disabilities Act.

The Americans With Disabilities Act.

Section 2.2-4311 (Employment Discrimination Act) of the Virginia Public Procurement Act.

Section 2.2-4354 (Payment to Subcontractor) of the Virginia Public Procurement Act.

Sections 2.2-4367 and 2.2-4377 (Ethics in Public Contracting) of the Virginia Public Procurement Act.

The Antitrust laws of the United States and the Commonwealth of Virginia.

***NOTE: The above Compliance clause is intended to be used in lieu of specific clauses addressing each requirement individually; however, if you or your legal advisor feels these requirements need to be addressed in more detail, clauses 2 through 4 may be used in place of clause 1.***

2. **ANTI-DISCRIMINATION:** By submitting their bids or proposals bidders or offerors certify to the Community Services Board that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Act of 1975, as amended, where applicable, the Virginians With Disabilities Act, the Americans With Disabilities Act and Section 2.2-4311 of the *Virginia Public Procurement Act*. If the award is made to a faith-based organization, the organization shall not discriminate against any recipient of goods, services, or disbursements made pursuant to the contract on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender or national origin and shall be subject to the same rules as other organizations that contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the public body. (*Code of Virginia*, § 2.2-4343.10).

In every contract over \$10,000 the provisions in 1. and 2. below apply:

- a. During the performance of this contract, the Contractor agrees as follows:
- E The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except there is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
  - E The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that such Contractor is an equal opportunity employer.
  - E Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this Section.
- b. The Contractor will include the provisions of 1. above in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

3. IMMIGRATION REFORM AND CONTROL ACT OF 1986: By submitting their bids or proposals, the bidders or offerors certify that they do not and will not during the performance of this contract employ illegal alien workers or otherwise violate the provisions of the federal Immigration Reform and Control Act of 1986.
  4. ANTITRUST: By entering into a contract, the Contractor conveys, sells, assigns, and transfers to the Community Services Board all rights, title and interest in and to all causes of the action it may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the particular goods or services purchased or acquired by the Community Services Board under said contract.
- D. DRUG FREE WORKPLACE: During the performance of this contract, the contractor agrees to (i) provide a drug-free workplace for the contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the contractor that the contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.
- For the purposes of this section, "*drug-free workplace*" means a site for the performance of work done in connection with a specific contract awarded to a contractor in accordance with this chapter, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.
- E. ETHICS IN PUBLIC CONTRACTING: By submitting their bids or proposals, Bidders or Offerors certify that their bids or proposals are made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other Bidder/Offeror, supplier, manufacturer or subcontractor in connection with their bid or proposal, and that they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised unless consideration of substantially equal or

greater value was exchanged.

- F. DEBARMENT STATUS: By submitting their bids or proposals, Bidders or Offerors certify that they are not currently debarred from submitting bids or proposals on contracts by any agency of the Commonwealth of Virginia, nor are they an agent of any person or entity that is currently debarred from submitting bids or proposals on contracts by any agency of the Commonwealth of Virginia.

G. MANDATORY USE OF CSB FORM AND TERMS AND CONDITIONS:

- (1) Invitation For Bids: Failure to submit a bid on the official Community Services Board form provided for that purpose shall be a cause for rejection of the bid. Modification of or additions to any portion of the invitation for bid may be cause for rejection of the bid; however, the Community Services Board reserves the right to decide, on a case by case basis, in its sole discretion, whether to reject such a bid as nonresponsive. As a precondition to its acceptance, the Community Services Board may, in its sole discretion, request that the Bidder withdraw or modify nonresponsive portions of a bid which do not affect quality, quantity, price, or delivery. No modification of or addition to the provisions of the contract shall be effective unless reduced to writing and signed by the parties.
- (2) Request For Proposals: Failure to submit a proposal on the official form provided for that purpose may be a cause for rejection of the proposal. Return of the complete document is required. Modification of or additions to any portion the solicitation may be cause for rejection of the proposal; however, the Community Services Board reserves the right to decide, on a case by case basis, in its sole discretion, whether to reject such a proposal.

- H. CLARIFICATION OF TERMS: If any prospective Bidder or Offeror has questions about the specifications or other solicitation documents, the prospective Bidder or Offeror should contact the buyer whose name appears on the face of the solicitation no later than five working days before the due date. Any revisions to the solicitation will be made only by addendum issued by the buyer.

I. PAYMENT:

1. To Prime Contractor:

- a) Invoices for items ordered, delivered and accepted shall be submitted by the contractor directly to the payment address shown on the purchase

order/contract. All invoices shall show the state contract number and/or purchase order number; social security number (for individual contractors) or the federal employer identification number (for proprietorships, partnerships, and corporations).

- b) Any payment terms requiring payment in less than 30 days will be regarded as requiring payment 30 days after invoice or delivery, whichever occurs last. This shall not affect offers of discounts for payment in less than 30 days, however. Invoices must show the contract or purchase order number assigned by the Community Services Board and shall be submitted by the contractor to the attention of (the fiscal office) and mailed to (address).
- c) All goods or services provided under this contract or purchase order, that are to be paid for with public funds, shall be billed by the contractor at the contract price, regardless of which public agency is being billed.
- d) The following shall be deemed to be the date of payment: the date of postmark in all cases where payment is made by mail, or the date of offset when offset proceedings have been instituted as authorized under the Virginia Debt Collection Act.
- e) **Unreasonable Charges.** Under certain emergency procurement and for most time and material purchases, final job costs cannot be accurately determined at the time orders are placed. In such cases, contractors should be put on notice that final payment in full is contingent on a determination of reasonableness with respect to all invoiced charges. Charges which appear to be unreasonable will be researched and challenged, and that portion of the invoice held in abeyance until a settlement can be reached. Upon determining that invoiced charges are not reasonable, the Commonwealth shall promptly notify the contractor, in writing, as to those charges which it considers unreasonable and the basis for the determination. A contractor may not institute legal action unless a settlement cannot be reached within thirty (30) days of notification. The provisions of this section do not relieve the CSB of its prompt payment obligations with respect to those charges which are not in dispute (*Code of Virginia, Section 2.2-4363*).

## 2. To Subcontractors:

- a) A contractor awarded a contract under this solicitation is hereby obligated:
  - 1) To pay the subcontractor(s) within seven (7) days of the contractor's receipt of payment from the CSB for the proportionate share of the payment received for work performed by the subcontractor(s) under the

contract; or

- 2) To notify the CSB and the subcontractor(s), in writing, of the contractor's intention to withhold payment and the reason.
- b) The contractor is obligated to pay the subcontractor(s) interest at the rate of one percent per month (unless otherwise provided under the terms of the contract) on all amounts owed by the contractor that remain unpaid seven (7) days following receipt of payment from the CSB, except for amounts withheld as stated in (2) above. The date of mailing of any payment by U.S. Mail is deemed to be payment to the addressee. These provisions apply to each sub-tier contractor performing under the primary contract. A contractor's obligation to pay an interest charge to a subcontractor may not be construed to be an obligation of the CSB.
- J. PRECEDENCE OF TERMS: Except for Paragraphs titled Procurement Regulations, Applicable Law and Courts, Compliance, Debarment Status, Mandatory Use of CSB Forms and Terms and Conditions, and Precedence of Terms herein, which shall apply in all instances, in the event there is a conflict between the other General Terms and Conditions and any Special Terms and Conditions in this solicitation, the Special Terms and Conditions shall apply.
- K. DELIVERY POINT: Except when otherwise specified herein, all items shall be F.O.B. delivery point.
- L. QUALIFICATIONS OF BIDDERS OR OFFERORS: The Community Services Board may make such reasonable investigations as deemed proper and necessary to determine the ability of the Bidder or Offeror to perform the work/furnish the item(s) and the Bidder or Offeror shall furnish to the Community Services Board all such information and data for this purpose as may be requested. The Community Services Board reserves the right to inspect Bidder's or Offeror's physical facilities prior to award to satisfy questions regarding the Bidder's or Offeror's capabilities. The Community Services Board further reserves the right to reject any bid or proposal if the evidence submitted by, or investigations of, such Bidder or Offeror fails to satisfy the Community Services Board that such Bidder or Offeror is properly qualified to carry out the obligations of the contract and to complete the work/furnish the item(s) contemplated therein.
- M. ADDITIONAL INFORMATION: The Community Services Board reserves the right to ask any bidder to submit information missing from its bid, to clarify its bid, and to submit additional information which the Community Services Board deems desirable.

***NOTE: The above clause is used with Invitations for Bids only.***



N. ASSIGNMENT OF CONTRACT: A contract shall not be assignable by the Contractor in whole or in part without the written consent of the Community Services Board.

O. CHANGES TO THE CONTRACT - Use either the long version (O-1) or the short version (O-2):

O-1. CHANGES TO THE CONTRACT:

Changes can be made to the Contract in any one of the following ways:

1. The Community Services Board may order changes within the general scope of the contract at any time by written notice to the Contractor. Changes within the scope of the contract include, but are not limited to things such as the method of packing or shipment and the place of delivery or installation. The Contractor shall comply with the notice upon receipt. The Contractor shall be compensated for any additional costs incurred as the result of such order and shall give the Purchasing Agency a credit for any savings. Said compensation shall be determined by one of the following methods:
  - a. By mutual agreement between the parties in writing; or
  - b. By agreeing upon a unit price or using a unit price set forth in the contract, if the work to be done can be expressed in units, and the Contractor accounts for the number of units of work performed, subject to the Community Services Board's right to audit the Contractor's records and/or to determine the correct number of units independently; or
  - c. By ordering the Contractor to proceed with the work and to keep a record of all costs incurred and savings realized. A markup for overhead and profit may be allowed if provided by the contract. The same markup shall be used for determining a decrease in price as the result of savings realized. The Contractor shall present the Purchasing Agency with all vouchers and records of expenses incurred and savings realized. The Community Services Board shall have the right to audit the records of the Contractor as it deems necessary to determine costs or savings. Any claim for an adjustment in price under this provision must be asserted by written notice to the Purchasing Agency within thirty (30) days from the date of receipt of the written order from the Community Services Board. If the parties fail to agree on an amount of adjustment, the question of an increase or decrease in the contract price or time for performance shall be resolved in accordance with the procedures for resolving disputes provided by the Disputes Clause of this contract or, if there is none, in accordance with the disputes provisions of the

Community Services Board's Procurement Policy. Neither the existence of a claim or a dispute resolution process, litigation or any other provision of this contract shall excuse the Contractor from promptly complying with the changes ordered by the Purchasing Agency or with the performance of the contract generally.

2. The parties may agree in writing to modify the scope of the contract. An increase or decrease in the price of the contract resulting from such modification shall be agreed to by the parties as a part of their written agreement to modify the scope of the contract.

O-2. CHANGES TO THE CONTRACT:

By written notice to the Contractor, the Community Services Board may from time to time make changes, within the general scope of the contract, in the services provided by the Contractor. The Contractor shall promptly comply with the notice and shall perform services in conformity to the notice. If any such change causes an increase or decrease in the Contractor's cost of performance, an equitable adjustment in the payment rate shall be negotiated and the contract modified accordingly by written supplemental agreement.

- P. TESTING AND INSPECTION: The Community Services Board reserves the right to conduct any test/inspection it may deem advisable to assure supplies and services conform to the specification.
- Q. DEFAULT: In case of failure to deliver goods or services in accordance with the contract terms and conditions, the Community Services Board, after due oral or written notice, may procure them from other sources and hold the Contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies which the Community Services Board may have.
- R. NON-DISCRIMINATION OF CONTRACTORS: A bidder, offeror, or contractor shall not be discriminated against in the solicitation or award of this contract because of race, religion, color, sex, national origin, age, or disability or against faith-based organizations. If the award of this contract is made to a faith-based organization and an individual, who applies for or receives goods, services, or disbursements provided pursuant to this contract objects to the religious character of the faith-based organization from which the individual receives or would receive the goods, services, or disbursements, the public body shall offer the individual, within a reasonable period of time after the date of his objection, access to equivalent goods, services, or disbursements from an alternative provider.

***(This clause is required, under Section 2.2-4343.1 of the Code of Virginia, to be included in all solicitations using an Invitation for Bids or Request for Proposals.)***

- S. TAXES: Sales to the Community Services Board are normally exempt from State sales tax. State sales and use tax certificates of exemption, Form ST-12, will be issued upon request. Deliveries against this contract shall be free of Federal excise and transportation taxes.

***(TAXES - NOT NORMALLY REQUIRED FOR SERVICE CONTRACTS)***

- T. USE OF BRAND NAMES: Unless otherwise provided in this solicitation, the name of a certain brand, make or manufacturer does not restrict Bidders or Offerors to the specific brand, make or manufacturer named, but conveys the general style, type, character, and quality of the article desired. Any article which the public body in its sole discretion determines to be the equal of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted. The Bidder or Offeror is responsible to clearly and specifically indicate the product being offered and to provide sufficient descriptive literature, catalog cuts and technical detail to enable the Community Services Board to determine if the product offered meets the requirements of the solicitation. This is required even if offering the exact brand, make or manufacturer specified. Normally in competitive sealed bidding only the information furnished with the bid will be considered in the evaluation. Failure to furnish adequate data for evaluation purposes may result in declaring a bid nonresponsive. Unless the Bidder/Offeror clearly indicates in its bid/proposal that the product offered is an "equal" product, such bid/proposal will be considered to offer the brand name product referenced in the solicitation.

***(NOT NORMALLY REQUIRED FOR SERVICE CONTRACTS)***

- U. TRANSPORTATION AND PACKAGING: By submitting their bids or proposals, all Bidders or Offerors certify and warrant that the price offered for FOB destination includes only the actual freight rate costs at the lowest and best rate and is based upon the actual weight of the goods to be shipped. Except as otherwise specified herein, standard commercial packaging, packing and shipping containers shall be used. All shipping containers shall be legibly marked or labeled on the outside with purchase order number, commodity description, and quantity.

***(NOT NORMALLY REQUIRED FOR SERVICE CONTRACTS)***

- V. ANNOUNCEMENT OF AWARD: Upon the award or the announcement of the decision to award a contract as a result of this solicitation, the Community Services Board will publicly post such notice on \_\_\_\_\_ for a minimum of 10 days.

## APPENDIX E - TERMS AND CONDITIONS

### SECTION II

#### SPECIAL TERMS AND CONDITIONS GOODS AND NONPROFESSIONAL SERVICES

The following is an index of special terms and conditions clauses that may be used at the buyer's discretion in IFBs and RFPs as the individual procurement may dictate. These clauses cover a broad spectrum of goods, printing and services and are followed by a brief explanation (indicated by an asterisk \*) of when each should be used. Other special terms and conditions may be developed and included in the solicitation when appropriate.

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1. **ADVERTISING:** In the event a contract is awarded for supplies, equipment, or services resulting from this bid/proposal, no indication of such sales or services to the (name of CSB) will be used in product literature or advertising. The Contractor shall not state in any of the advertising or product literature that the Community Services Board has purchased or uses its products or services.

**\* When used: This provision is for use in solicitations for goods or services when the CSB wants to ensure that the use of the goods or services by the CSB is not used in advertising or product literature.**

2. **ASBESTOS:** Whenever and wherever during the course of performing any work under this contract, the Contractor discovers the presence of asbestos or suspects that asbestos is present, he shall stop the work immediately, secure the area, notify the Building Owner and await positive identification of the suspect material. During the downtime in such a case, the Contractor shall not disturb any surrounding surfaces but shall protect the area with suitable dust covers. In the event the Contractor is delayed due to the discovery of asbestos or suspected asbestos, then a mutually agreed extension of time to perform the work shall be allowed the Contractor but without additional compensation due to the time extension.

**\* When used: For use in service contracts or furnish and install goods contracts when it is possible that the contractor may encounter asbestos during performance of the contract.**

3. **AS-BUILT DRAWINGS:** The Contractor shall provide the Community Services Board a clean set of reproducible "as built" drawings and wiring diagrams, marked to record all changes made during installation or construction. The Contractor shall also provide the Community Services Board with maintenance manuals, parts lists and a copy of all warranties for all equipment. All "as built" drawings and wiring diagrams, maintenance manuals, parts lists and warranties shall be delivered to the Community Services Board upon completion of the work and prior to final payment.

**\* When used: For furnish and install and construction and renovation projects; i.e., fire alarm systems, heating and air conditioning systems, refrigeration rooms, building modifications, major equipment installations, etc.**

4. **AUDIT:** The Contractor hereby agrees to retain all books, records, and other documents relative to this contract for five (5) years after final payment, or until audited by the Community Services Board, whichever is sooner. The agency, its authorized agents, and/or State auditors shall have full access to and the right to examine any of said materials during said period.

- **When used:** Should be included in all term contracts for goods or services. Do not use in spot purchases.

5. AUTHORIZED USERS: Additional Community Services Boards, state or local government agencies, institutions and/or other public bodies may be added or deleted to receive the goods or services resulting from this solicitation. The addition or deletion of authorized users shall be made only by written modification to the contract. Such modification shall name the specific agency added or deleted and the effective date.

- **When used:** If it is determined that other public agencies (public bodies) may benefit from participating in a cooperative purchasing agreement. To obtain maximum pricing advantage, every effort should be made to identify participating agencies and their expected usage in the solicitation.

6. AUTHORIZED USERS: \_\_\_\_\_ CSB is issuing this solicitation in cooperation with other public bodies. Requirements of \_\_\_\_(other public bodies) have been combined, and the total estimated usage is shown within this solicitation. \_\_\_\_\_ CSB is responsible for administering the program; therefore, correspondence should be directed to the \_\_\_\_\_ CSB. The contractor shall provide a volume purchase report prior to contract expiration or renewal action.

- \* **When used:** Used in cooperative purchasing solicitations where requirements of two or more public bodies have been combined to increase efficiency or reduce administrative expenses.

7. AVAILABILITY OF FUNDS: It is understood and agreed between the parties herein that the agency shall be bound hereunder only to the extent of the funds available or which may hereafter become available for the purpose of this agreement.

- \* **When used:** Term contracts only or if the contract performance will overlap fiscal years.

8. AWARD OF CONTRACT: (Note: All solicitations must specify the method of award. Select one of the following clauses, as appropriate, for the type of procurement:)

A. AWARD: An award will be made to the lowest responsive and responsible Bidder. Evaluation will be based on net prices. Unit prices, extensions and grand total must be shown. In case of arithmetic errors, the unit price will govern. If cash discount for prompt payment is offered, it must be clearly shown in the space provided. Discounts for prompt payment will not be

considered in making awards. The Community Services Board reserves the right to reject any and all bids in whole or in part, to waive any informality, and to delete items prior to making an award.

**\* When used: This award clause can be used in invitation for bids for goods or services.**

- B. Award: The Community Services Board will make the award(s) on basis to the lowest responsive and responsible Bidder. The purchasing office reserves the right to conduct any test it may deem advisable and to make all evaluations. The Community Services Board also reserves the right to reject any or all bids, in whole or in part, to waive informalities and to delete items prior to making the award, whenever it is deemed in the sole opinion of the procuring public body to be in its best interest.

**\* When used: For goods or nonprofessional services by filling in the blank, i.e., line item, total sum, lot, etc. This clause shall not be used in a Request for Proposals.**

- C. Award: The right is reserved to make a separate award of each item, a group of items or all items, and to make an award either in whole or in part, whichever is deemed in the best interest of the Community Services Board. The award or awards will be made to the lowest responsive Bidder or Bidders as applicable.

**\* When used: For goods only when multiple line items are involved, provided a prior written determination has been made that multiple awards may result in a savings to the Community Services Board. This clause shall not be used in a Request for Proposals.**

- D. Award To Multiple Bidders: The Community Services Board will make awards on a \_\_\_\_\_ basis to the lowest responsive and responsible Bidders, provided that the next lowest Bidders are within \_\_\_\_% of the lowest Bidder and provided that different brands are offered. Due consideration will be given to price, quality as judged by tests and previous experience, and of the ability of the Bidder to render required services. The Community Services Board reserves the right to conduct any tests it may deem advisable and to make all evaluations. The Community Services Board also reserves the right to reject any or all bids, in whole or in part, to waive informalities and to delete items prior to making the award, whenever it is deemed in the sole opinion of the procuring public body to be in its best interest.

**\* When used: For goods term contracts only when multiple awards will be made based on different brands being offered. Specify how the award will be made, i.e., line item, total sum, lot, etc. plus the number of awards and the**



percentage figure. **This clause shall not be used in a Request for Proposals.**

- E. **Award to Multiple Bidders:** The Community Services Board reserves the right to make multiple awards as a result of this solicitation. The award(s) will be made to the lowest responsive and responsible bidder(s) meeting the requirement of the solicitation. The Community Services Board reserves the right to conduct any tests it may deem advisable and to make all evaluations. The Community Services Board also reserves the right to reject any or all bids, in whole or in part, to waive informalities and to delete items prior to making the award, whenever it is deemed in the sole opinion of the procuring public body to be in its best interest.

**\* When used: For goods and nonprofessional services when multiple awards may be made in order to meet the requirements of the purchasing entity. This clause cannot be used for construction or for a procurement of professional services that exceeds \$30,000.**

- F. **Award:** Selection shall be made of two or more Offerors deemed to be fully qualified and best suited among those submitting proposals on the basis of the evaluation factors included in the Request for Proposals, including price, if so stated in the Request for Proposals. Negotiations shall be conducted with the Offerors so selected. Price shall be considered, but need not be the sole determining factor. After negotiations have been conducted with each Offeror so selected, the agency shall select the Offeror which, in its opinion, has made the best proposal, and shall award the contract to that Offeror. The Community Services Board may cancel this Request for Proposals or reject proposals at any time prior to an award, and is not required to furnish a statement of the reason why a particular proposal was not deemed to be the most advantageous. (Section 2.2-4359.D, Code of Virginia.) Should the Community Services Board determine in writing and in its sole discretion that only one Offeror is fully qualified, or that one Offeror is clearly more highly qualified than the others under consideration, a contract may be negotiated and awarded to that Offeror. The award document will be a contract incorporating by reference all the requirements, terms and conditions of the solicitation and the contractor's proposal as negotiated.

**\* When used: For goods and nonprofessional services when competitive negotiation will be used. This clause shall not be used in an Invitation for Bids nor a professional services Request for Proposal (over \$30,000).**

- G. **Award:** The Community Services Board shall engage in individual discussions with two or more Offerors deemed fully qualified, responsible and suitable on the basis of initial responses and with emphasis on professional competence, to provide the required services. Repetitive informal interviews

shall be permissible. Such Offerors shall be encouraged to elaborate on their qualifications and performance data or staff expertise pertinent to the proposed project, as well as alternative concepts. At the discussion stage the public body may discuss nonbinding estimates of total project costs, including, but not limited to, life-cycle costing, and, where appropriate, nonbinding estimates of price for services. Proprietary information from competing Offerors shall not be disclosed to the public or to competitors. At the conclusion of the informal interviews, on the basis of evaluation factors published in the Request for Proposals and all information developed in the selection process to this point, the purchasing agency shall select, in the order of preference, two or more Offerors whose professional qualifications and proposed services are deemed most meritorious. Negotiations shall then be conducted, beginning with the Offeror ranked first. If a contract satisfactory and advantageous to the purchasing agency can be negotiated at a price considered fair and reasonable, the award shall be made to that Offeror. Otherwise, negotiations with the Offeror ranked first shall be formally terminated and negotiations conducted with the Offeror ranked second, and so on, until such a contract can be negotiated at fair and reasonable price. Should the Community Services Board determine in writing and in its sole discretion that only one Offeror is fully qualified, or that one Offeror is clearly more highly qualified and suitable than the others under consideration, a contract may be negotiated and awarded to that Offeror.

- **When used: Professional services only. This clause shall not be used in an Invitation for Bids.**

- H. Award to Multiple Offerors: Selection shall be made of two or more offerors deemed to be fully qualified and best suited among those submitting proposals on the basis of the evaluation factors included in the Request for Proposals, including price, if so stated in the Request for Proposals. Negotiations shall be conducted with the offerors so selected. Price shall be considered, but need not be the sole determining factor. After negotiations have been conducted with each offeror so selected, the purchasing agency shall select the offeror which, in its opinion, has made the best proposal, and shall award the contract to that offeror. The Commonwealth reserves the right to make multiple awards as a result of this solicitation. The Commonwealth may cancel this Request for Proposals or reject proposals at any time prior to an award, and is not required to furnish a statement of the reasons why a particular proposal was not deemed to be most advantageous (*Code of Virginia, Section 2.2-4359.D*). Should the Community Services Board determine in writing and in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly qualified than the others under consideration, a contract may be negotiated and awarded to that offeror. The award document will be a contract incorporating by reference all the requirements, terms and conditions of the solicitation and the contractor's

proposal as negotiated.

**\* When Used:** For goods and nonprofessional services when competitive negotiation will be used and multiple awards are desired to meet the requirements of the CSB. This clause cannot be used in an Invitation for Bids or a professional services Request for Proposals (over \$30,000).

9. **BEST AND FINAL OFFER:** At the conclusion of negotiations the offeror(s) may be asked to submit in writing, a best and final offer (BAFO). After the BAFO is submitted, no further negotiations shall be conducted with the offeror(s). The offeror's proposal will be rescored to combine and include the information contained in the BAFO. The decision to award will be based on the final evaluation including the BAFO

**\* When used:** Used only in Request for Proposals. This clause should not be used as a matter of routine. If it is anticipated that because of the nature of the requirement, the negotiations could linger, this provision should be used to show clearly when negotiations would end or to cut off negotiations at a particular point called for by the contract officer.

10. **BID ACCEPTANCE PERIOD:** Any bid in response to this solicitation shall be valid for ( ) days. At the end of the ( ) days the bid may be withdrawn at the written request of the Bidder. If the bid is not withdrawn at that time it remains in effect until an award is made or the solicitation is canceled.

**\* When used:** Procurement Regulations normally state that unless otherwise provided a bid is valid for 30 days. If it is anticipated that it will take longer than 30 days to evaluate and make an award then the above clause should be used and the appropriate number of days inserted in the blanks.

11. **BID BOND OR GUARANTEE:** Each bid shall be accompanied by a bid bond or guarantee of five percent (5%) of the amount of the bid, which shall be a certified check, cashier's check, or a bid bond payable to the \_\_\_\_\_ Community Services Board. The sureties of all bonds shall be of such surety company or companies as are approved by the State and are authorized to transact business in the Commonwealth of Virginia. Such bid bond or check shall be submitted with the understanding that it shall guarantee that the Bidder will not withdraw such bid during the period of \_\_\_\_\_ days following the opening of bids; that if such bid is accepted, the Bidder will accept and perform under the terms of the Invitation for Bid and purchase order or contract. The bid guarantee will be returned upon award of contract.

**\* When used:** Must be used in all solicitations for construction type contracts over \$100,000. Insert the same number of days in the space provided as entered

in the Bid Acceptance Period Clause. This clause may also be used for construction type services under \$100,000, as well as for goods or services of any dollar amount.

12. **BID PRICES:** Bid shall be in the form of a firm unit price for each item during the contract period.

**\* When used:** In annual goods contracts without a price escalation/de-escalation clause. A different version of this clause, specifically worded to fit the situation, should be used in solicitations for various types of services, and in solicitations for the lease or rental of equipment.

13. **BLANKET FIDELITY BOND:** Contractor shall maintain a blanket fidelity bond obtained from an insurance company licensed to conduct fidelity business in the home state of the Contractor and which has earned an A.M. Best Company, Inc. rating of A or better, as reflected in their most current publication, covering all personnel under contract to the \_\_\_\_\_ Community Services Board, with a penalty amount of not less than \$\_\_\_\_\_, naming the \_\_\_\_\_ Community Services Board as co-obligee. Certificate of such protection must be presented to the purchasing agency prior to the start of the service showing name of surety, limit and type of coverage, term of coverage, co-obligee provision and name and address of licensed Virginia insurance agent. The Contractor agrees to maintain such bond until one year after the completion of the contract.

**\* When used:** Debt collection type services. The amount to be inserted in the blank space should be based on the total value of accounts expected to be turned over to the contractor at any one time for collection and not the entire amount of the CSB's outstanding accounts.

14. **Breach:** In the event of breach by the Contractor, the Community Services Board shall have the right to immediately, or thereafter, terminate the contract. In the alternative, the Community Services Board may give written notice to the Contractor specifying the breach and providing a period of time in which such breach must be corrected. Should the Community Services Board find that the Contractor has failed to properly cure any breach after being provided with appropriate notification then the Community Services Board can cause the contractual agreement between the Contractor and the Community Services Board to be terminated for breach. All remedies provided by law will then apply to those orders or the agreement as a whole. The Community Services Board's failure to exercise its right to terminate for breach under this provision shall not be construed as a waiver of its right to terminate, rescind or revoke a contract in the event of any subsequent breach of any provisions of this Agreement.

15. **CANCELLATION OF CONTRACT:** The Community Services Board reserves the right to cancel and terminate any resulting contract, in part or in whole, without

penalty, upon 60 days written notice to the Contractor. Any contract cancellation notice shall not relieve the Contractor of the obligation to deliver and/or perform on all outstanding orders issued prior to the effective date of cancellation.

**\* When used: May be included in contracts for goods or services. This clause is not appropriate for use in spot purchases.**

16. CERTIFICATION OF MEAT PRODUCTS: By my signature on this solicitation, I hereby certify and warrant that all products offered for delivery meet or exceed the requirements of the Federal Institutional Meat Purchase Specifications (IMPS), Virginia Department of Agriculture Regulations, Federal Food, Drug and Cosmetic Act, and the Federal Wholesome Meat Act. All products awarded and delivered against this solicitation shall be subject to inspection at destination for specification compliance.

**\* When used: All solicitations for meat products.**

17. CERTIFIED TEST REPORT: Each Bidder shall provide a copy of a certified test report with their bid. The certified test report shall be from a recognized independent testing laboratory or manufacturer's quality control laboratory showing all test results and full compliance with the appropriate specifications indicated herein. However, the Community Services Board reserves the right to perform any tests or inspections when and as deemed necessary to verify the certified test report.

**\* When used: For solicitation of goods where a certified test report may be the only method of determining an item offered would meet specifications.**

18. CONFIDENTIALITY AND RECORDS: The Contractor assures that information and data obtained, to include personal facts and circumstances related to clients, shall be considered confidential, during and following the term of this agreement, and will not be divulged without the Community Services Board's written consent and then only in strict accordance with prevailing laws. The Contractor shall hold all information provided by the Community Services Board as proprietary and confidential, and shall make no unauthorized reproduction or distribution of such material. Upon termination of this agreement and/or within 30 days of receipt of final payment for services, all materials, data and information in the possession of the Contractor, provided to or obtained by the Contractor during the performance of this agreement and to satisfy the requirements of this agreement, shall be provided to the Purchasing Agency in hardcopy and/or electronic form. Except where law allows, the Contractor shall not retain hard copies of the material, data and information and all electronic stored material, data and information shall be expunged from equipment and systems retained by the Contractor.

**\* When used: For solicitation of services where the contractor may have access**

to records of or contact with clients.

19. CONTRACT MANAGEMENT AND ADMINISTRATION: A contract manager will be appointed by the Community Services Board who will be responsible for monitoring contractor performance, resolving contractual issues, and interpreting contractual terms and conditions. Further, the Contract Manager may pursue any issue(s), relating to the contract agreement that results from this solicitation, that are in the best interest of the Community Services Board. The Contract Manager is not authorized to make or authorize changes to the contract, to approve additional work or expenditures, or to change deliverables or timeframes. Requests for such changes shall be directed to the Purchasing Officer.
20. CONTRACTOR/SUBCONTRACTOR LICENSE REQUIREMENT: By my signature on this solicitation, I certify that this firm/individual and/or subcontractor is properly licensed for providing the goods/services specified.

Contractor Name: \_\_\_\_\_ Subcontractor Name: \_\_\_\_\_

License # \_\_\_\_\_ Type \_\_\_\_\_

**\* When used: Include in all solicitations for specific types of services for which State statutes or regulatory agencies require contractors to be properly registered, licensed or hold a permit prior to performing such work. See 2.9.**

21. CONTRACTOR REGISTRATION: If a contract for construction, removal, repair or improvement of a building or other real property is for seventy thousand dollars (\$70,000) or more, or if the total value of all such contracts undertaken by Bidder/Offeror within any twelve-month period is five hundred thousand dollars (\$500,000) or more, the Bidder/Offeror is required under Title 54.1-1100, Code of Virginia (1950), as amended, to be licensed by the State Board of Contractors as a "CLASS A CONTRACTOR". If such a contract is for seventy five hundred dollars (\$7,500) or more but less than seventy thousand dollars (\$70,000), (one thousand dollars [\$1,000] for electrical, plumbing and HVAC work) the Bidder/Offeror is required to be licensed as a "CLASS B CONTRACTOR". If such a contract is for one thousand dollars (\$1,000) or more but less than seventy five hundred dollars (\$7,500) and is not for electrical, plumbing and HVAC work, the bidder is required to be licenses as a "CLASS C CONTRACTOR" The Bidder/Offeror shall place on the outside of the envelope containing the bid/proposal and shall place in the bid/proposal over his signature whichever of the following notations is appropriate, inserting his contractor license number:

Licensed Class A Virginia Contractor No. \_\_\_\_\_  
Specialty \_\_\_\_\_

Licensed Class B Virginia Contractor No. \_\_\_\_\_

Specialty \_\_\_\_\_

Licensed Class C Virginia Contractor No. \_\_\_\_\_

Specialty \_\_\_\_\_

If the Bidder/Offeror shall fail to provide this information on his bid/proposal or on the envelope containing the bid/proposal and shall fail to promptly provide said Contractor license number to the Community Services Board in writing when requested to do so before or after the opening of Bids/Proposals, he shall be deemed to be in violation of Section 54-1115 of the Code of Virginia (1950), as amended, and his bid/proposal will not be considered.

If a Bidder/Offeror shall fail to obtain the required license prior to submission of his bid/proposal, the bid/proposal shall not be considered.

**\* When used: Required to be used in all solicitations by the Code of Virginia for all construction, removal, repair or improvements to facilities. This includes almost all specialty trades, i.e., glue down carpet, painting, fencing, roofing, plumbing, electrical, carpentry, etc. When in doubt as to whether or not this clause should be included in the solicitation, contact the Department of Commerce, State Board for Contractors, telephone, (804) 367-2785.**

22. CONTRACTOR'S TITLE TO MATERIALS: No materials or supplies for the work shall be purchased by the Contractor or by any Subcontractor subject to any chattel mortgage or under a conditional sales or other agreement by which an interest is retained by the seller. The Contractor warrants that he has clear title to all materials and supplies for which he invoices for payment.

**\* When used: For use in solicitations for construction and for furnish and install equipment.**

23. CRIMINAL HISTORY: The Community Services Board reserves the right to restrict activities required to provide the services herein to only those persons who are without criminal conviction. This restriction shall not relieve the contractor of any requirements herein. Upon request of the Community Services Board, the contractor shall obtain a criminal history background check on any person, employee or subcontractor used for the delivery of services herein. The Community Services Board may, in its sole decision, determine that an individual possessing a criminal conviction poses no risk or threat to the Community Services Board, its employees or clients, and may waive this restriction on a case by case basis.

**\* When used: When the Contractor may have direct contact with clients or with financial records.**

24. DELIVERY: State your earliest firm delivery or performance date: 20 \_\_\_\_\_. This date may be a factor in making the award.

**\* When used: When delivery time is critical for either goods or services.**

25. DELIVERY AND STORAGE: It shall be the responsibility of the Contractor to make all arrangements for delivery, unloading, receiving and storing materials in the building during installation. The Owner will not assume any responsibility for receiving these shipments. Contractor shall check with the Owner and make necessary arrangements for security and storage space in the building during installation.

**\* When used: For furnish and install solicitations, if applicable.**

26. DELIVERY NOTIFICATION: The Community Services Board shall be notified \_\_\_\_\_ hours prior to delivery of any items so that personnel may be available to allow access to the building and verify items received. Notification shall be made to :

_____	_____
Name	Phone

**\* When used: Use in solicitations for goods if the receiving facility is not staffed at all times during normal working hours.**

27. DISCOUNTS: A prompt payment discount offered for prompt payment within ( ) calendar days or longer will be considered in determining net low bid.

**\* When used: When the CSB knows payments can be made within the time frame specified.**

28. DISCOUNTS - SPECIAL OR PROMOTIONAL DISCOUNTS: The Contractor shall extend any special promotional sale prices or discounts immediately to the Community Services Board during the term of the contract. Such notice shall also advise the duration of the specific sale or discount price.

**\* When used: This clause should be considered for use when soliciting bids for products where it is known that vendors or manufacturers have promotional sales opportunities.**

29. DISPUTES: Disputes shall be communicated between Contractor's assigned coordinator and assigned CSB official, who will negotiate resolution of dispute. If the condition is not corrected, the coordinator and official shall meet with the CSB's Contract Officer who will negotiate resolution of the dispute. If the condition is not corrected at the above level, a meeting shall be scheduled with



the CSB Executive Director or his/her designee by the CSB Contract Officer, including all interested parties. The decision of the CSB Executive Director/designee shall be final.

**\* When used:** In contracts or solicitations where the CSB's procurement regulations are not referenced. If the procurement regulations contain a disputes resolution clause and these regulations are referenced, this clause may not be needed.

- 30 **DRAWINGS:** The Contractor shall provide the Community Services Board a clean set of reproducible "as built" drawings and wiring diagrams, marked to record all changes made during installation or construction. The Contractor shall also provide the Community Services Board with maintenance manuals and parts lists for all equipment. All "as built" drawings and wiring diagrams, maintenance manuals, and parts lists shall be delivered to the Community Services Board upon completion of the work and prior to final payment.

**\* When used:** For furnish and install and construction and renovation projects; i.e., fire alarm systems, heating and air conditioning systems, refrigeration rooms, building modifications, major equipment installations, etc.)

31. **DRUG FREE WORKPLACE:** During the performance of this contract, the contractor agrees to (i) provide a drug-free workplace for the contractor's employees; (ii) post in conspicuous places, available to employees and applicant for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the contractor that the contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "*drug-free workplace*" means a site for the performance of work in connection with a specific contract awarded to a contractor in accordance with this chapter, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

**\* When used:** Required under Section 11-51.1 of the Code of Virginia to be included in every contract over \$10,000. If procuring by unsealed solicitation, the Community Services General Terms and Conditions may be incorporated by reference.

32. EXTRA CHARGES NOT ALLOWED: The bid price shall be for complete installation ready for the Community Services Board's use, and shall include all applicable freight and installation charges; extra charges will not be allowed.

**\* When used: For furnish and install solicitations. Also may be used for inside delivery by changing the wording.**

33. FINAL INSPECTION: At the conclusion of the work, the Contractor shall demonstrate to the authorized owners representative that the work is fully operational and in compliance with contract specifications and codes. Any deficiencies shall be promptly and permanently corrected by the Contractor at the Contractor's sole expense prior to final acceptance of the work.

**\* When used: For furnish and install solicitations.**

34. FLAME RETARDANT CERTIFICATE: Each Bidder/Offeror shall submit a certification in writing with their bid/proposal that all materials used in fabricating draperies or curtains are inherently flame retardant or have been treated to meet NFPA Standard 701, large and small scale test.

**\* When used: Must be used in solicitations for draperies or curtains that will be installed in office spaces and dormitories, but not state-owned housing.**

35. HUMAN RIGHTS: The Contractor shall comply with and adopt the Board's Human Rights Policy. This policy complies with the Community Human Rights Regulations promulgated in 1986 and has been approved by the State Human rights Committee.

**\* When used: When a contractor is to provide direct care services to CSB clients and where these protections are not elsewhere covered in the contract. This clause may need to be revised to comply with the individual CSB's situation.**

36. IDENTIFICATION OF BID/PROPOSAL ENVELOPE: If a special envelope is not furnished, or if return in the special envelope is not possible, the signed bid/proposal should be returned in a separate envelope or package, sealed and identified as follows:

From: \_\_\_\_\_

Name of Bidder/Offeror	Due Date	Time
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_____ Street or Box Number	_____ IFB No./RFP No.
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—City, State, Zip Code IFB/RFP Title

Name of Contract/Purchase Officer or Buyer: \_\_\_\_\_

The envelope should be addressed as directed on Page 1 of the solicitation.

If a bid/proposal not contained in the special envelope is mailed, the Bidder or Offeror takes the risk that the envelope, even if marked as described above, may be inadvertently opened and the information compromised which may cause the bid or proposal to be disqualified. Bids/Proposals may be hand delivered to the designated location in the office issuing the solicitation. No other correspondence or other Bids/Proposals should be placed in the envelope.

**\* When used: For use in solicitations for which the purchasing agency has not furnished a special bid/proposal return envelope or the envelope furnished is not adequate.**

37. **INDEMNIFICATION:** Contractor agrees to indemnify, defend and hold harmless the Community Services Board, its officers, agents, and employees from any claims, damages and actions of any kind or nature, whether at law or in equity, arising from or caused by the use of any materials, goods, or equipment of any kind or nature furnished by the Contractor/any services of any kind or nature furnished by the Contractor, provided that such liability is not attributable to the sole negligence of the using agency or to failure of the using agency to use the materials, goods, or equipment in the manner already and permanently described by the Contractor on the materials, goods or equipment delivered.

**\* When used: For contracts involving substantial risk of third party injuries/claims. Use of this clause requires prior approval of your legal counsel.**

38. **INSPECTION OF JOB SITE:** My signature on this solicitation constitutes certification that I have inspected the job site and am aware of the conditions under which the work must be accomplished. Claims, as a result of failure to inspect the job site, will not be considered by the Community Services Board.

**\* When used: Should be used in furnish and install, services and non-capital outlay construction projects.**

39. **INSTALLATION:** All items must be assembled and set in place, ready for use. All crating and other debris must be removed from the premises.

**\* When used: For inside delivery of goods which require unpacking and**

assembly.

40. INSURANCE, MONEY AND SECURITIES: Contractor shall maintain a Broad Form Money and Securities Insurance Policy obtained from an insurance company licensed to conduct crime insurance business in the home state of the contractor and which has earned an A.M. Best Company, Inc. rating of A or better, as reflected in their most current publication, covering all money and property entrusted to the contractor by the Community Services Board, with limits of coverage of not less than \$\_\_\_\_\_ for Loss Inside the Premises Coverage and not less than \$\_\_\_\_\_ for Loss Outside the Premises Coverage, naming the Commonwealth of Virginia as additional named insured as respects this contract. Certificate of such protection must be presented to the purchasing agency prior to the start of the service showing name of insurance company, limits and type of coverage, term of coverage, additional insured provision and name and address of licensed insurance agent. The contractor agrees to maintain such policy until the completion of the contract and all money and property of the Community Services Board is remitted to the Community Services Board.

**\* When used: Required for contracts covering the collection, handling, safekeeping, and/or transporting CSB monies or securities. The amounts to be entered by the agency should be equal to the estimated maximum amount of monies or securities that would be in the contractor's possession at any one time.**

41. INSURANCE:

By signing and submitting a bid or proposal under this solicitation, the Bidder or Offeror certifies that if awarded the contract, it will have the following insurance coverages at the time the work commences. For construction contracts, if any subcontractors are involved, the subcontractor will have workers' compensation insurance in accordance with Sections 2.2-4332 and 65.2-800 et seq. Of the *Code of Virginia*.

The bidder or offeror further certifies that the contractor and any subcontractors will maintain these during the entire term of the contract and that all insurance coverages will be provided by insurance companies authorized to sell insurance in Virginia by the Virginia State Corporation Commission.

INSURANCE COVERAGES AND LIMITS REQUIRED:

- A. Worker's Compensation - Statutory requirements and benefits.
- B. Employers Liability - \$100,000.
- C. General Liability - \$500,000 combined single limit. The Community Services

Board is to be named as an additional insured with respect to the services being procured. These coverages are to include Premises/Operations Liability, Products and Completed Operations Coverage, Independent Contractor's Liability, Owner's and Contractor's Protective Liability and Personal Injury Liability.

D. Automobile Liability - \$500,000. Combined single limit.

**NOTE: In addition, various Professional Liability/Errors and Omissions coverages are required when soliciting those services shown below:**

<u>Profession/ Service</u>	<u>Limits</u>
Accounting	\$1,000,000 occurrence, \$3,000,000 aggregate
Architecture	\$2,000,000 occurrence, \$6,000,000 aggregate
Asbestos Design, Inspection or Abatement Contractors	\$1,000,000 occurrence, \$3,000,000 aggregate
Health Care Practitioner * *	Must be covered by Health Care Practitioner liability insurance which meets the minimum level required under Section 8.01-581.15 of the Code of Virginia.
Insurance/ Risk Management	\$1,000,000 per occurrence, \$3,000,000 aggregate
Landscape/ Architecture	\$500,000 occurrence, \$1,000,000 aggregate
Legal	\$1,000,000 occurrence, \$5,000,000 aggregate
Professional Engineer	\$2,000,000 occurrence, \$6,000,000 aggregate
Surveying	\$100,000 occurrence, \$300,000 aggregate

Garagekeeper's Liability and Garagekeeper's Legal Liability - \$500,000. This coverage shall include those specified in c. above. These are needed when automobile or unlicensed motor vehicle maintenance contracts are procured.

- **When used:** Required in all solicitations where a contractor will perform work or services in or on the CSB site. The limits are minimums and may be increased. Your insurance agent or advisor should be contacted when other types of coverage may be required or when in doubt as to the need for other limits.

\*\* Includes, dentists, optometrists, nurses, pharmacists, doctors, etc. The amount of coverage required was increased to \$1,500,000 effective 8/1/99. Effective July 1 of each year thereafter, the required coverage will increase by \$50,000 until it reaches \$2,000,000 by 7/1/08. (It will increase by \$75,000 in 2007 and 2008.)

42. **INTEGRATION AND MODIFICATION:** This contract constitutes the entire agreement between the Contractor and the Purchaser. No alteration, amendment or modification in the provisions of this agreement shall be effective unless reduced to writing, signed by the parties and attached hereto.

43. **LABELING OF HAZARDOUS SUBSTANCES:** If the items or products requested by this solicitation are "Hazardous Substances" as defined by the § 3.1-250 of the Code of Virginia (1950), as amended, or § 1261 of Title 15 of the United States Code, then the Bidder/Offeror, by submitting his bid/proposal, certifies and warrants that the items or products to be delivered under this contract shall be properly labeled as required by the foregoing sections and that by delivering the items or products the Bidder/Offeror does not violate any of the prohibitions of § 3.1-252 of the Code of Virginia or Title 15 U.S.C. § 1263.

**\* When used:** Must be included in all solicitations for the purchase of chemicals or compounds which may contain toxic or hazardous substances, i.e., cleaning, janitorial supplies, chemicals of all types, etc. (See clause #32).

44. **LIMITATION OF LIABILITY:**

A. To the maximum extent permitted by applicable law, the contractor will not be liable under this contract for any indirect, incidental, special or consequential damages, or damages from loss of profits, revenue, data or use of the supplies, equipment and/or services delivered under this contract. This limitation of liability will not apply, however, to liability arising from: (a) personal injury or death; (b) defect or deficiency caused by willful misconduct or negligence on the part of the contractor; or (c) circumstances where the contract expressly provides a right to damages, indemnification or reimbursement.

**\*When Used:** *This clause should be used on an exception basis* and only when it is anticipated that liability may be an issue and the risk and liability to the CSB is negligible. In such cases, the above clause should be included in written solicitations and contracts, as well as procurements made on a sole

source or emergency basis. Examples are: office supplies and equipment, paper products, printing, furniture, audio/visual equipment, consultant services, media services, equipment maintenance, etc. Prior review by risk management and/or legal counsel is recommended before including in a solicitation or contract. Note: The clause may be modified, as applicable, depending on the intended use of the goods and/or services.

- B. **LIMITATION OF LIABILITY:** To the maximum extent permitted by applicable law, the contractor's liability under this contract for loss or damages to government property caused by use of any defective or deficient supplies, products, equipment and/or services delivered under this contract shall not exceed the greater of \$ \_\_\_\_\_ or \_\_\_\_\_ times the amount of money aid to the contractor under this contract during the twelve month period preceding the event or circumstance giving rise to such liability. The contractor will not be liable under this contract for any indirect, incidental, special or consequential damages, or damages from loss of profits, revenue, data or use of the supplies, equipment and/or services delivered under this contract. The above limitation of liability is per incident. The limitation and exclusion of damages in the foregoing sentences will not apply, however, to liability arising from: (a) personal injury or death; (b) defect or deficiency caused by willful misconduct or negligence on the part of the contractor; or (c) circumstances where the contract expressly provides a right to damages, indemnification or reimbursement.

**\* When Used:** ***This clause should be used on an exception basis*** and only when it is anticipated that liability will be an issue and the risk to the CSB may be extensive. In such cases, the above clause should be included in written solicitations and contracts, as well as procurements made on a sole source or emergency basis. Examples are: software; hardware; two-way communication devices; telephone equipment; medical, dental and laboratory equipment and supplies; elevator maintenance and inspection services; food service; medical service, etc. Caution: The potential risk must be calculated in dollars and indicated in the first blank. Delete the remaining part of the sentence. If the risk value cannot be determined within a reasonable amount and the contract is for indefinite quantity (e.g., annual contract), estimate the approximate annual value and fill in the dollar amount. Enter a multiplication factor in the second blank, such as two (2) or some other reasonable number. Prior review by risk management and/or legal counsel is recommended before including in a solicitation or contract. The clause may be modified, as applicable, depending on the intended use of the goods and/or services.

45. **LIQUIDATED DAMAGES:** (Note: Review the guidance contained in the General Comments and Procedures below before deciding to include one of the following clauses in a solicitation.

- A. Liquidated Damages, Goods and Nonprofessional Services: Delivery is required not later than \_\_\_\_\_. It is understood and agreed by the Bidder/Offeror that time is of the essence in the delivery of supplies, services, materials or equipment of the character and quality specified in the bid/proposal document. In the event these specified supplies, services, materials or equipment are not delivered by the date specified there will be deducted, not as a penalty but as liquidated damages, the sum of \$\_\_\_\_\_ per day for each and every calendar day of delay beyond the time specified; except that if the delivery be delayed by any act, negligence or default on the part of the Community Services Board, public enemy, war, embargo, fire or explosion not caused by the negligence or intentional act of the Contractor or his supplier(s), or by riot, sabotage or labor trouble that results from a cause or causes entirely beyond the control or fault of the contractor or his supplier(s), a reasonable extension of time as the procuring public body deems appropriate may be granted. Upon receipt of a written request and justification for any extension from the Contractor, the purchasing office may extend the time for performance of the contract or delivery of goods herein specified, at the purchasing office's sole discretion, for good cause shown.

**\* When used: For critical delivery of goods or services. The required delivery date and the dollar amount must be filled in by the agency.**

- B. LIQUIDATED DAMAGES, FURNISH AND INSTALL: Work shall begin calendar days after receipt of purchase order or contract and all work shall be completed in \_\_\_\_ calendar days. It is hereby understood and agreed by the Bidder that time is of the essence in the delivery of supplies, services, materials or equipment of the character and quality specified in the bid document. In the event these specified supplies, services, materials or equipment are not delivered by the date specified, there will be deducted, not as a penalty but as liquidated damages, the sum of \$\_\_\_\_\_per day for each and every calendar day of delay beyond the time specified; except that if the delivery be delayed by any act, negligence or default on the part of the Community Services Board, public enemy, war, embargo and fire or explosion not caused by the negligence or intentional act of the Contractor or his supplier(s), or by riot, sabotage or labor trouble that results from a cause or causes entirely beyond the control or fault of the contractor or his supplier(s), a reasonable extension of time as the procuring public body deems appropriate may be granted. Upon receipt of a written request and justification for an extension from the Contractor, the purchasing office may extend the time for performance of the contract or delivery of goods herein specified at the purchasing office's sole discretion for good cause shown.

**\* When used: For furnish and install contracts covering modifications, repair and other non-capital outlay construction-type contracts. The dollar amount**



must be filled in by the agency. The two blanks for the number of calendar days may be filled in by the agency prior to issuing the solicitation or the Bidder/Offeror may be required to fill in the number of days with the bid/proposal. The dollar amount must be reasonable.

NOTE: GENERAL COMMENTS:

These clauses are not to be used as a penalty, but as a means to assess damages when both (1) the time of delivery or performance is such an important factor in the award of the contract that the Community Services Board may reasonably expect to suffer damage if the delivery or performance is delinquent, and (2) the extent or amount of such damage would be difficult or impossible to ascertain or prove. In deciding whether to include a liquidated damages clause in a contract, the purchase officer should consider the probable effect on such matters as pricing, competition, and the costs and difficulties of contract administration.

When a liquidated damages clause is to be used in a contract, the applicable clause and appropriate rate(s) of liquidated damages shall be included in the solicitation. The rate of liquidated damages used must be reasonable and considered on a case-by-case basis since liquidated damages fixed without any reference to probable actual damages may be held to be a penalty, and therefore unenforceable.

When a liquidated damages clause is used in a construction, modification or repair contract, the rate(s) of liquidated damages to be assessed against the contractor should be for each day of delay and the rate(s) should, as a minimum, cover the estimated cost of inspection and superintendence for each day of delay in completion. Whenever the Community Services Board will suffer other specific losses due to the failure of the Contractor to complete the work on time, the rate(s) should also include an amount for these items. Examples of specific losses are:

- (1) The cost of substitute facilities;
- (2) The rental of buildings and/or equipment.

**ASSESSMENT PROCEDURES:**

If a liquidated damages clause is included in a contract and the contractor is late or behind schedule and the delay is not an excusable one, the purchase officer should (1) issue a Notice of Contract Deficiency or "Cure Letter" to the Contractor (See Appendix M); and (2) in addition, if there is a performance bond, send a copy

of the cure letter to the bonding company. If the Contractor does not comply with the cure letter, notify the bonding company that they are responsible to complete the contract and at the same time, terminate the contract for default. (See Appendix M).

If there is no performance bond with the contract, (1) send a cure letter to the contractor. If the Contractor does not correct the problem, issue a termination for default letter and re-bid the requirement. Assess liquidated damages against the Contractor from the date the project was to be completed, as stated in the liquidated damages clause, to the date of the termination of default letter. In addition, any excess costs encountered in the re-purchase action may also be held against the defaulted contractor.

46. MAINTENANCE MANUALS: The Contractor shall provide with each piece of equipment an operations and maintenance manual with wiring diagrams, parts list, and a copy of all warranties.

**\* When used:** For solicitations to purchase or furnish and install major equipment or systems.)

47. MATERIAL SAFETY DATA SHEETS: Material Safety Data Sheets and descriptive literature shall be provided with the bid/proposal for each chemical and/or compound offered. Failure on the part of the Bidder/Offeror to submit such data sheets may be cause for declaring the bid/proposal as nonresponsive.

**\* When used:** Must be used for the purchase of all chemicals or compounds which may contain toxic or hazardous substances, i.e., cleaning, janitorial supplies, chemicals of all types. (See clause #43.)

48. NAME OF MANUFACTURER AND SHIPPING POINT: Each Bidder/Offeror shall supply in the space below the name and address of the manufacturer of each item offered and the shipping point.

ITEM NUMBER (S):  
MANUFACTURER:  
ADDRESS:

SHIPPING POINT:

**\* When used:** For spot purchases or annual contracts for goods if the agency desires this information.

49. NEGOTIATION WITH THE LOWEST BIDDER: Unless all bids are canceled or rejected, the Community Services Board reserves the right granted by Section 2.2-4318 of the Code of Virginia to negotiate with the lowest responsive, responsible Bidder to obtain a contract price within the funds available to the State agency whenever such low bid exceeds the Community Services Board's available funds. For the purpose of determining when such negotiations may take place, the term "available funds" shall mean those funds which were budgeted by the Community Services Board agency for this contract prior to the issuance of the written Invitation for Bids. Negotiations with the low Bidder may include both modifications of the bid price and the Scope of Work/Specifications to be performed. The State agency shall initiate such negotiations by written notice to the lowest responsive, responsible Bidder that its bid exceeds the available funds and that the State agency wishes to negotiate a lower contract price. The times, places, and manner of negotiating shall be agreed to by the State agency and the lowest responsive, responsible Bidder.

**\* When used: For use only in an Invitation for Bids, for goods or services. This clause shall not be used as a matter of routine.**

50. ORDERING OPTION: The \_\_\_\_\_ Community Services Board may during the first 60 days after this contract is awarded, with the concurrence of the contractor, place additional orders under the contract at the original unit price through the issuance of separate purchase orders. The aggregate of such additional orders shall not exceed 100% of the quantity originally stated in the contract.

**\* When used: This can be used when purchasing goods on a spot basis and the purchaser anticipates that there might be an additional requirement for the same goods within the next sixty days. When it is used in a solicitation, a statement on the face of the invitation should direct the bidder's attention to this clause. It is not for use with term type contracts.**

51. OWNERSHIP OF MATERIAL: Ownership of all data, material, and documentation, including electronic data and media originated and prepared for the Community Services Board pursuant to the RFP shall belong exclusively to the Community Services Board and be subject to public inspection in accordance with the Virginia Freedom of Information Act; however, the Offeror must invoke the protection of this section prior to or upon submission of the data or other materials, and must identify the data or other materials to be protected and state the reasons why protection is necessary.

**\* When used: Used in RFPs when Offerors will be required to submit various material and data to be used by the CSB in the evaluation process.**

52. PERFORMANCE AND PAYMENT BONDS: The successful Bidder shall deliver to

the purchasing office executed Standard Performance and Labor and Material Payment Bonds, each in the sum of the contract amount, with the Community Service Board as obligee. The surety shall be a surety company or companies approved by the State Corporation Commission to transact business in the Commonwealth of Virginia. No payment shall be due and payable to the Contractor, even if the contract has been performed in whole or in part, until the bonds have been delivered to and approved by the purchasing office. Standard bond forms will be provided by the purchasing office prior to or at the time of award.

**\* When used: Must be used in all solicitations for construction which exceed \$100,000, but may be for construction, goods and services for less than \$100,000.**

53. PRE-BID/PRE-PROPOSAL CONFERENCE - MANDATORY/OPTIONAL: (Note: Select one of the following two clauses if a mandatory or optional pre-bid or pre-proposal conference is desired and include it in the solicitation.)

A. MANDATORY PRE-BID/PRE-PROPOSAL CONFERENCE: A mandatory pre-bid/pre-proposal conference will be at \_\_\_\_\_ (time) and (date) \_\_\_\_\_ at the \_\_\_\_\_ (place) \_\_\_\_\_. The purpose of this conference is to allow potential Bidders/Offerors an opportunity to present questions and obtain clarification relative to any facet of this solicitation.

Due to the importance of all Bidders/Offerors having a clear understanding of the specifications/scope of work and requirements for this solicitation, attendance at this conference will be a prerequisite for submitting a bid/proposal. Bids/Proposals will only be accepted from those Bidders/Offerors who are represented at this bid/proposal conference. Attendance at the conference will be evidenced by the representative's signature on the attendance roster.

Bring a copy of the solicitation with you. Any changes resulting from this conference will be issued in a written addendum to the solicitation.

**\* When used: For use in complex procurements when clarification of the contents of the solicitation to potential Bidders/Offerors will greatly enhance understanding of what is sought to be procured. "CAUTION":, use of this clause may limit competition because only those that attend can submit a bid/proposal. Use wording appropriate to the type of solicitation, i.e., pre-bid, bid, Bidder in an IFB and pre-proposal, proposal, Offeror in an RFP.**

B. OPTIONAL PRE-BID/PRE-PROPOSAL CONFERENCE: An optional pre-

bid/pre-proposal conference will be held at \_\_\_\_ (time) and (date) \_\_\_\_  
at the \_\_\_\_ (place) \_\_\_\_\_. The purpose of this conference is  
to allow potential Bidders/Offerors an opportunity to present questions and  
obtain clarification relative to any facet of this solicitation.

While attendance at this conference will not be a prerequisite to submitting  
a bid/proposal, Bidders/Offerors who intend to submit a bid/proposal are  
encouraged to attend. Any changes resulting from this conference will be  
issued in a written addendum to the solicitation.

**\* When used: For use in less complex procurements when vendor input is  
desired. Bidders/Offerors that do not attend may still submit a bid/proposal.  
Use wording appropriate to the type of solicitation as described above.**

54. PREVENTIVE MAINTENANCE: The Contractor shall provide necessary preventive  
maintenance, required testing and inspection, calibration and/or other work  
necessary to maintain the equipment in complete operational condition during the  
warranty period.

**\* When used: For equipment purchases only in conjunction with a warranty  
clause which requires preventive maintenance during the warranty period.**

55. PRICE ESCALATION/DEESCALATION: Price adjustments may be permitted only  
for changes in the Contractor's cost of materials not to exceed the increase in the  
following index/indices:

\_\_\_\_\_ No price increases will be  
authorized for \_\_\_\_ calendar days after the effective date of the contract. Price  
escalation may be permitted only at the end of this period and each \_\_\_\_ days  
thereafter and only where verified to the satisfaction of the purchasing office.  
However, "across the board" price decreases are subject to implementation at any  
time and shall be immediately conveyed to the Community Services Board.

Contractor shall give not less than 30 days advance notice of any price increase  
to the purchasing office. Any approved price changes will be effective only at the  
beginning of the calendar month following the end of the full 30 day notification  
period. The Contractor shall document the amount and proposed effective date of  
any general change in the price of materials. Documentation shall be supplied  
with the Contractor's request for increase which will: (1) verify that the  
requested price increase is general in scope and not applicable just to the  
Community Services Board; and (2) verify the amount or percentage of increase  
which is being passed on to the Contractor by the Contractor's suppliers.

The purchasing office will notify Contractor in writing of the effective date of any  
increase which it approves. However, the Contractor shall fill all purchase orders  
received prior to the effective date of the price adjustment at the old contract

prices. The Contractor is further advised that decreases which affect the cost of materials are required to be communicated immediately to the purchasing office.

**\* When used:** For annual goods contracts only where, because of rapidly changing market conditions, a firm fixed price cannot be secured for one (1) year or more. Depending on the commodity and how frequent costs change, the number of days that should be entered by the CSB in the blank space are 30, 60, 90 or 180 days.

56. PRIME CONTRACTOR RESPONSIBILITIES: The Contractor shall be responsible for completely supervising and directing the work under this contract and all subcontractors that he may utilize, using his best skill and attention. Subcontractors who perform work under this contract shall be responsible to the prime Contractor. The Contractor agrees that he is as fully responsible for the acts and omissions of his subcontractors and of persons employed by them as he is for the acts and omissions of his own employees.

**\* When used:** For use in solicitations to furnish and install goods or provide services when subcontracting will be permitted.

57. PRINTING: (Note: Select any or all of the following clauses, as may be appropriate, and include in solicitations for printing.)

- A. PRINTING RAST: Bids for printing will be rejected when the additional per thousand cost, run at the same time (R.A.S.T.) equals or exceeds the base lot per thousand price quoted and/or incremental unit cost. On bids for multiple part forms and envelopes, the additional per thousand price (R.A.S.T.) shall not exceed the base lot per thousand price quoted and/or incremental unit cost.

**\* When used:** USE IN ALL PRINTING BIDS.

- B. ACCEPTABLE MILL BRANDS: Only those papers listed in the latest edition of The Competitive Grade Finder Directory fine paper directory book, will be considered as equal.

**\* When used:** Whenever a specific paper is specified along with the phrase "or equal."

- C. OWNERSHIP OF PRINTING MATERIALS: All artwork, camera-ready copy, negative, dies, photos, and similar materials used to produce a printing job shall become the property of the Community Services Board. Any furnished materials shall remain the property of the Community Services Board. All such items and materials shall be delivered to the ordering agency in usable condition after completion of the work, and prior to

submission of the invoice for payment.

**\* When used: Must be included in all printing solicitations.**

- D. PRINTING PICKUPS/DELIVERIES: Contractor shall be responsible for all pickups and deliveries of all materials.

**\* When used: Include in all printing solicitations when the contractor will be required to pick up artwork, negatives, etc. for the job and deliver the finished product to the CSB.**

- E. QUALITY COLOR PRINTING: Contractor shall analyze each four-color subject and make separations individually. Contractor shall allow for color correction, dot etching, etc., in order to achieve top-quality production from each separation made.

**\* When used: Include in all printing solicitations involving four-color process of more than one picture.**

- F. COPYRIGHT: No vendor may copyright any work contracted for by the CSB and produced for the CSB without the prior written consent of the CSB.

58. PRINTING DEFINITIONS: (Note: Include the appropriate definition in the solicitation whenever any of the following terms are used to describe the quality of the printing requirement.)

- A. CLASS 1 - CRITICAL QUALITY PRINTING: This class shall be used for four-color process printing where critical color matches are necessary or where engraved and/or embossed invitations are required. Typical examples: matching artists' original paintings or sculptures, or product colors so that they represent true colors or materials used in creating the original are accurately represented, and reproduction of medical slides where true color may be critical. This is a step above "pleasing colors." Finishing and bindery operations shall be of this same critical quality.

- B. CLASS 1 - EXCELLENT QUALITY PRINTING: This class shall be used when good clean, crisp reproduction is required. One color or multiple color jobs may be classified as "Class 1." Four-color process subjects shall have pleasing color matches with good skin tones; some color correction may be necessary. PMS color matches may be required. Very fine lines and drawings may be required. Normally half-tones or screen tints will require 133, 150, or 200 line screens. There is to be large reverse areas, and/or large solid areas where good even ink coverage is necessary. Because of the overall design, very accurate registration is required. Camera-ready

copy is generally furnished. Metallic inks may be used. Finishing and bindery operations shall be of the same excellent quality.

C. CLASS 2 - GOOD QUALITY PRINTING: This class shall be used for the majority of black and white or one color jobs where no critical registration is required or when no colors overprint. Multiple color jobs may be classified as "Class 2." Original copy is uniform and may have medium lines and drawings, medium-sized halftones and screens, medium-sized reverses and solid areas. Normally halftones and screentints would be produced with 120 or 133 line screens. Metallic inks and process work are not generally included in the class. Normally metal plates and negatives are required. No cut lines or spots are acceptable. Finishing and bindery operations shall be of the same good quality.

D. CLASS 3 - MEDIUM QUALITY PRINTING: This class denotes the least expensive kind of printing and shall be used for short-run, reproduction duplicator-type work where electrostatic or other direct plate methods are acceptable. Original copy is usually type written and may have coarse lines, drawings, and small reverses or solid areas. Evenness of ink coverage is not required. Coarse screen halftones or coarse screens may be used. No colors overprint each other and no metallic inks are used. Finishing and bindery operations would normally be simple stapling or punching.

59. PRODUCT INFORMATION: The Bidder/Offeror shall clearly and specifically identify the product being offered and enclose complete and detailed descriptive literature, catalog cuts and specifications with the bid/proposal to enable the Community Services Board to determine if the product offered meets the requirements of the solicitation. Failure to do so may cause the bid/proposal to be considered nonresponsive.

**\* When used: For solicitations to furnish and install or deliver goods when detailed specifications are required to properly evaluate items offered.**

60. QUANTITIES: Quantities set forth in this solicitation are estimates only, and the Contractor shall supply at bid prices actual quantities as ordered, regardless of whether such total quantities are more or less than those shown.

**\* When used: For solicitations for requirements type term contracts.**

61. RECYCLED PAPER: The (Name) Community Services Board in determining the award of any contract for paper and paper products, shall procure using competitive bidding and shall award to the lowest responsive and responsible bidder bidding recycled paper and paper products of a quality suitable for the purpose intended, and in accordance with current EPA procurement guidelines for



paper and paper products, so long as the bid price is not more than ten percent (10%) greater than the bid price of the lowest responsive and responsible bidder offering a product that does not contain recycled materials.

Bidder agrees to furnish upon request, a minimum of fifty (50) sheets of paper stock offered. Paper stock to be used for testing on CSB equipment (may specify equipment that paper will be tested on) to ensure compatibility. If requested, samples must be delivered within five (5) days.

**\* When Used: Use in solicitations for paper and paper products.**

62. **REFERENCES:** Bidders shall provide a list of at least 3 references where similar goods and/or services have been provided. Each reference shall include the name of the organization, the complete mailing address, the name of the contact person and telephone number.

	<u>ORGANIZATION</u>	<u>ADDRESS</u>	<u>CONTACT PERSON</u>	<u>TELEPHONE</u>
1.	_____	_____	_____	_____
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____

**\* When used: For any solicitation where the purchaser must evaluate offers based upon the offerors ability to provide certain services.**

63. **RENEWAL OF CONTRACT:** (NOTE: A term contract may not be renewed unless a renewal clause is included in the solicitation. Select one of the following clauses if an option to extend the contract beyond the original period of the contract is desired.)

A. **RENEWAL OF CONTRACT:** This contract may be renewed by the Community Services Board upon written agreement of both parties for (one year)/(\_\_\_\_\_ successive one year periods), under the terms of the current contract, and at a reasonable time (approximately 90 days) prior to the expiration.

**\* When used: For solicitations for term contracts to permit renewal of the contract for a specific period of time, i.e. one year, two successive one-year periods, etc. at the same price(s), terms and conditions as in the original contract. Renegotiation of the price(s), terms and conditions is not permitted. Unless market prices are expected to remain stable, however, the Price Escalation/Deescalation clause (No. 38) should be considered for use with this provision.**

B. **RENEWAL OF CONTRACT:** This contract may be renewed by the Community

Services Board for a period of (one year)/(\_\_\_\_\_ successive one year periods) under the terms and conditions of the original contract except as stated in 1. and 2. below. Written notice of the Community Services Board's intention to renew shall be given approximately 90 days prior to the expiration date of each contract period.

1. If the Community Services Board elects to exercise the option to renew the contract for an additional one-year period, the contract price(s) for the additional one year shall not exceed the contract price(s) of the original contract increased/decreased by no more than the percentage increase/decrease of the \_\_\_\_\_ category of the CPI-W section of the Consumer Price Index of the United States Bureau of Labor Statistics for the latest twelve months for which statistics are available.
2. If during the first one-year renewal the Community Services Board elects to exercise the option to renew the contract for the second additional one-year period, the contract price(s) for the second additional one-year period shall not exceed the contract price(s) of the first one-year extension period increased/decreased by no more than the percentage increase/decrease of the \_\_\_\_\_ category of the CPI-W section of the Consumer Price Index of the United States Bureau of Labor Statistics for the latest twelve months for which statistics are available.

**\* When used. For service contracts, use of this clause permits renewal of a contract with an increase/decrease in the labor rate portion only of the original contract. This clause should only be used during periods of abnormal economic uncertainty where an extension of one or more additional years may be desired. Select the most appropriate category that would apply to the contract and fill in the blank. If only a one-year extension is desired, delete paragraph 2. of the clause.**

64. REPRODUCTION RIGHTS: The Contractor shall provide the Community Services Board with free and unrestricted right of reproduction of any of the products developed pursuant to a resulting contract.

**\* When used: For contracts in which the Contractor will be required to produce publications or other materials for the CSB.**

65. RESPONSIBILITIES OF PARTIES: Each party to this contract shall assume responsibility for any action or inaction resulting from its negligence, error or omission or that of its employees, agents or clients which results in any claim, damage or action of any kind or nature, whether at law or in equity. No claim or law suit shall be made against the Contracting Agency, its employees, agents or clients for any action or inaction by the Lessor, its employees, agents or clients. This provision shall in no way be construed as a waive of the Contracting

Agency's sovereign immunity or other defenses.

**\* When used:** As alternate to Indemnification clause (#30, page E-22 of this manual) when both parties are held responsible for their own negligence. Legal counsel is recommended before including either this or the Indemnification clause in any contract.

66. SERVICE AUTHORIZATION: All services delivered under the resulting contract must be authorized in writing by the Board's staff, to be designated upon execution of the contract. In no instance will the Contractor render services, in whole or in part using resources provided under the contract to any unauthorized individual, group, agency or organization.

**\* When used:** When the CSB wants services rendered only at their direction.

67. SEVERABILITY: Each paragraph and provision of this agreement is severable from the entire agreement, and if any provision is declared invalid, the remaining provisions shall nevertheless remain in effect.

68. SUBCONTRACTING ENCOURAGED: It is the policy of the Community Services Board to contribute to the establishment, preservation, and strengthening of disadvantaged minority, small and women-owned businesses and to encourage their participation in the CSB procurement activities. Toward that end, the CSB encourages contractors to provide for the participation of disadvantaged minority businesses, small, and women-owned businesses through partnerships, joint ventures, subcontracts, and other contractual opportunities.

**\*When used:** To encourage participation by small, minority and women-owned businesses.

69. SUBCONTRACTS: No portion of the work shall be subcontracted without prior written consent of the Community Services Board. In the event that the Contractor desires to subcontract some part of the work specified herein, the Contractor shall furnish the purchasing agency the names, qualifications and experience of their proposed subcontractors. The Contractor shall, however, remain fully liable and responsible for the work to be done by his subcontractor(s) and shall assure compliance with all requirements of the contract.

**\* When used:** In solicitations for furnish and install or services when subcontracting will be permitted only upon prior approval of the purchasing agency.

70. USE OF RECYCLED MATERIALS: Notwithstanding the prohibition against used, damaged or obsolete items, vendors are encouraged to use secondary or recycled materials in the manufacture of products to the maximum extent practicable

without jeopardizing the performance or intended end use of the product unless such use is precluded due to health and welfare or safety requirements or product specifications contained herein. Please provide information in this regard:

1. Do any of the goods offered contain recycled materials? \_\_\_\_ Yes \_\_\_\_ No.

2. If so, please qualify the recycled material content. \_\_\_\_\_

**\* When Used: Include in solicitations for goods that have a high probability for the use of recycled materials.**

71. WARRANTY: All materials and equipment shall be fully guaranteed against defects in material and workmanship for a period of \_\_\_\_\_ days following date of delivery. Should any defect be noted by the owner, the Purchasing Office will notify the Contractor of such defect or nonconformance. Notification will state either (1) that the Contractor shall replace or correct, or (2) the owner does not require replacement or correction, but an equitable adjustment to the contract price will be negotiated. If the Contractor is required to correct or replace, it shall be at no cost to the Community Services Board and shall be subject to all provisions of this clause to the same extent as materials initially delivered. If the Contractor fails or refuses to replace or correct the deficiency, the office issuing the purchase order may have the materials corrected or replaced with similar items and charge the Contractor the costs occasioned thereby or obtain an equitable adjustment in the contract price.

**\* When used: Include in solicitations to furnish and install or deliver goods when the procuring agency wants to specify the length of time the warranty is to run; i.e., equipment 1 year, compressor 5 years, piano 10 years, etc.**

72. WARRANTY (COMMERCIAL): The Contractor agrees that the supplies or services furnished under any award resulting from this solicitation shall be covered by the most favorable commercial warranties the Contractor gives any customer for such supplies or services and that the rights and remedies provided therein are in addition to and do not limit those available to the Community Services Board by any other clause of this solicitation. A copy of this warranty must be furnished with the bid/proposal.

**\* When used: Include in solicitations for goods, furnish and install or services when commercial warranty provisions for a particular item or service are acceptable.**

73. WORK SITE DAMAGES: Any damage, including damage to finished surfaces, resulting from the performance of this contract shall be repaired to the Community Services Board's satisfaction at the Contractor's expense.

**\* When used:** Include in solicitations to furnish and install equipment. May also be used in solicitations for services such as moving, maintenance, removal of equipment, non-capital outlay construction projects, etc.

74. WORK ESTIMATES (TIME AND MATERIAL CONTRACTS): Under this time and material contract, the contractor shall furnish the CSB with a non-binding written estimate of the total costs to complete the work required. The estimate must include the labor category(ies), the contractor's hourly rates specified in the contract, and the total material cost. Material costs shall be billed at contractor's actual invoice costs (contractor shall furnish copies of all invoices for materials) or discount off the list price, whichever is specified in the contract. If the agency determines that the estimated price is not fair and reasonable, the CSB has the right to ask the contractor to reevaluate the estimate. If the revised estimate is determined to be not fair and reasonable, the CSB reserves the right to obtain additional quotes from other vendors. A work order will be issued to the contractor, as the authority to proceed with the work, which will incorporate the contractor's estimate and the terms and conditions of the contract. The contractor and his/her personnel shall log in with the designated contract administrator each day before and after work to confirm labor hours.

**\* When Used:** This clause may be used for all time and material contracts where the contractor furnishes estimates prior to starting work for particular projects. A CSB should take the necessary steps to ensure that it is protected from those cases where a contractor submits a low estimate and the invoice is much higher. Use of this clause will provide that protection as long as the contractor is held to the terms of this clause.

## **APPENDIX E - TERMS AND CONDITIONS**

### **SECTION III**

#### **ADDITIONAL TERMS AND CONDITIONS FOR NON-CAPITAL OUTLAY CONSTRUCTION PROJECTS**

The following Additional Terms and Conditions may be used in all solicitations for non-capital outlay projects that involve building, altering, repairing, improving or demolishing any structure, building or paving project (other than highways), and any draining, dredging, excavation, grading or similar work upon real property which do not require the use of capital outlay procedures. These Additional Terms and Conditions may be included in the IFB in addition to those listed in Appendix E, Section I. The Virginia Public Procurement Act requires the use of competitive sealed bidding for construction projects unless the use of competitive negotiation can be justified under the provisions of Section 2.2-4303.D.

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# 1. DEFINITIONS:

- a. **CSB:** The term "CSB" shall mean the Owner which is the \_\_\_\_\_ Community Services Board through the governing Body, the Board, the Building Committee or other agent with authority to execute the contract for the \_\_\_\_\_ Community Services Board. The Community Services Board's Agent is the official with the authority to sign the contract on behalf of the Community Services Board.
- b. **Construction:** As used in these documents shall include new construction, reconstruction, renovation, restoration, major repair, demolition and all similar work upon buildings and ancillary facilities owned or to be acquired by the CSB and any draining, dredging, excavation, grading or similar work upon real property.
- c. **Contractor:** The term "Contractor" means the person, firm or corporation with whom the Owner has entered into a contractual agreement and includes the plural number and the feminine gender when such are named in the contract as the Contractor.
- d. **Defective:** An adjective which when modifying the word "Work" refers to

Work that is unsatisfactory, faulty or deficient, or does not conform to the Contract Documents, or does not meet the requirements of any inspections, standard, test or approval referred to in the Contract Documents, or has been damaged prior to final payment.

- e. **Emergency:** Any unforeseen combination of circumstances or a resulting state that poses imminent danger to health, life or property.
- f. **Final Acceptance:** The CSB's acceptance of the Project from the Contractor upon confirmation from the Project Inspector and the Contractor that the project is totally complete in accordance with the contract requirements and that all defects have been eliminated. Final acceptance is confirmed by the making of final payment of the contract amount including any change orders or adjustment thereto.
- g. **Notice:** All written notices, demands, instructions, claims, approvals and disapprovals required to obtain compliance with the Contract requirements. Any written notice by either party to the Contract shall be sufficiently given if delivered to or at the last known business address of the person, firm or corporation constituting the party to the Contract, or to his, their or its authorized agent, representative or officer, or when enclosed in a postage prepaid envelope addressed to such last known business address and deposited in a United States mailbox.
- h. **Notice to Proceed:** A written notice given to the Owner to the Contractor fixing the date on which the Contract time will commence for the Contractor to begin the prosecution of the Work in accordance with the requirements of the Contract Documents.
- i. **Owner:** The Community Services Board, with whom the Contractor has entered into a contract and for whom the Work or services is to be provided.
- j. **Project Inspector:** One or more individuals employed by the Owner to inspect the Work and/or to act as clerk of the works to the extent required by the Owner. The Owner shall notify the Contractor in writing of the appointment of such Project Inspector(s).
- k. **Provide:** Shall mean furnish and install ready for its intended use.
- l. **Submittals:** All drawings, diagrams, illustrations, schedules and other data required by the Contract Documents which are specifically prepared by or for the Contractor to illustrate some portion of the Work and all illustrations, brochures, standard schedules, performance charts, instructions, diagrams and other information prepared by a Supplier and submitted by the Contractor to illustrate material or equipment for some portion of the Work.



- m. **Subcontractor:** An individual, partnership or corporation having a direct contract with the Contractor or with any Subcontractor for the performance of the Work. It includes one who provides on-site labor but does not include one who furnishes or supplies materials for the project.
- n. **Substantial Completion:** The Work which is sufficiently complete, in accordance with the Contract Documents, so that the project can be utilized by the Owner for the purposes for which it is intended.
- o. **Supplier:** A manufacturer, fabricator, distributor, materialman or vendor who provides material for the project but does not provide on-site labor.
- p. **Underground Facilities:** All pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels or other such facilities or attachments, and any encasements containing such facilities which are or have been installed underground to furnish any of the following services or materials: electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, sewage and drainage removal, traffic or other control systems or water.
- q. **Work:** The entire completed construction or the various separately identifiable parts thereof required to be furnished under the Contract Documents. Work is the result of performing services, furnishing labor, and furnishing and incorporating materials and equipment into the construction, all as required by the Contract Documents.

## 2. CONTRACT DOCUMENTS:

- a. The contract entered into by the parties shall consist of the Invitation for Bids, the signed bid submitted by the Contractor; General Terms and Conditions; these Additional Terms and Conditions; the Special Terms and Conditions; the drawing, if any; the specifications; and all modifications and addenda to the foregoing documents, all of which shall be referred to collectively as the Contract Documents.
- b. All time limits stated in the Contract Documents, including but not limited to the time for completion of the Work, are of the essence of the Contract.
- c. Anything called for by one of the Contract Documents and not called for by the others shall be of like effect as if required or called for by all, except that a provision clearly designed to negate or alter a provision contained in one or more of the other Contract Documents shall have the intended effect.

## 3. LAWS AND REGULATIONS:

- a. The Contractor shall comply with all laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the performance of the Work and shall give all notices required thereby.
  - b. This Contract and all other contracts and subcontracts are subject to the provisions of Articles 3 and 5, Chapter 4, Title 40.1, Code of Virginia, relating to labor unions and the "right to work," The Contractor and its Subcontractors, whether residents or nonresidents of the Commonwealth, who perform any work related to the project shall comply with all of the said provisions.
  - c. The provisions of all rules and regulations governing safety as adopted by the Safety Codes Commission of the Commonwealth of Virginia, and as issued by the Department of Labor and Industry under Title 40.1 of the Code of Virginia shall apply to all work under this contract. Inspectors from the Department of Labor and Industry shall be granted access to the Work for inspection without first obtaining a search warrant from the court.
  - d. Building Permit: Building permits where required will be obtained and paid for by the Owner. This does not include any local license fees, business fees or similar assessments which may be imposed by the appropriate political subdivision.
  - e. The Contractor, if not licensed as an asbestos abatement contractor or an RFS contractor in accordance with Section 54.1-514, Code of Virginia, shall have all asbestos related Work performed by subcontractors who are duly licensed as asbestos contractors or RFS contractors as appropriate for the Work required.
4. PREPARATION AND SUBMISSION OF BIDS: Bids must give the full business address of the Bidder and be signed by him/her with his/her usual signature. Bids by partnerships must furnish the full name of all partners and must be signed in the partnership name by one of the members of the partnership or any authorized representative, followed by the designation of the person signing. Bids by corporations must be signed with the legal name of the corporation followed by the name of the State in which it is incorporated and by the signature and designation of the president, secretary or other person authorized to bind it in the matter. The name of each person signing shall also be typed or printed below the signature. A bid by a person who affixes to the signature the word "President", "Secretary", "Agent" or other designation without disclosing the principal, may be held to be the bid of the individual signing. When requested by the CSB, satisfactory evidence of the authority of the officer signing in behalf of the corporation shall be furnished.
5. WITHDRAWAL OR MODIFICATION OF BIDS: Bids may be withdrawn or modified by written notice received from bidders prior to the time fixed for bid receipt. The withdrawal or modification may be made by the person signing the bid or by an individual(s) who is authorized by him on the face of the bid.

Written modifications may be made on the bid form itself, on the envelope in which the bid is enclosed, or on a separate document. Written modifications, whether the original is delivered or transmitted by facsimile, must be signed by the person making the modification or withdrawal.

6. RECEIPT AND OPENING OF BIDS:

- a. It is the responsibility of the Bidder to assure that the bid is delivered to the place designated for receipt of bids and prior to the time set for receipt of bids. No bids received after the time designated for receipt of bids shall be considered.
- b. Bids will be opened at the time and place stated in the advertisement, and their contents made public for the information of the bidders and others interested who may be present either in person or by representative. The officer or agent of the Owner, whose duty it is to open them, will decide when the specific time has arrived. No responsibility will be attached to any officer or agent for the premature opening of a bid not properly addressed and identified.
- c. The provisions of Section 2.2-4342 of the Code of Virginia, as amended, shall be applicable to the inspection of bids received.

7. ERRORS IN BIDS

A bidder may withdraw his or her bid from consideration if the price bid was substantially lower than the other bids due solely to a mistake therein, provided the bid was submitted in good faith, and the mistake was a clerical mistake as opposed to a judgment mistake, and was actually due to an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of a bid, which unintentional arithmetic error or unintentional omission can be clearly shown by objective evidence drawn from inspection of original work papers, documents and materials used in the preparation of the bid sought to be withdrawn.

In accordance with Section 2.2-4330 A.(ii) of the Code of Virginia, the bidder must submit to the contracting authority his or her original work papers, documents and materials used in the preparation of the bid within one day after the date fixed for submission of bids. Such work papers shall be delivered by the bidder in person or by registered mail at or prior to the time fixed for the opening of bids. Such work papers, documents and materials may be considered as trade secrets or proprietary information subject to the conditions of subsection D of Section 2.2-4342, Code of Virginia. The bids shall be opened one day following at the time fixed by the contracting authority for the submission of bids. Thereafter, the bidder shall have two (2) hours after the opening of bids within which to claim in writing any mistake as defined herein and withdraw his bid. The contract shall not be awarded by the contracting authority until such two-hour period has elapsed. Such mistake shall be proved

only from the original work papers, documents and materials delivered to the contracting authority as required herein.

No bid may be withdrawn under this section when the result would be the awarding of the contract on another bid of the same bidder or of another bidder in which the ownership of the withdrawing bidder is more than five percent.

No bidder who is permitted to withdraw a bid shall, for compensation, supply any material or labor to or perform any subcontract or other work agreement for the person or firm to whom the contract is awarded or otherwise benefit, directly or indirectly, from the performance of the project for which the withdrawn bid was submitted.

If a bid is withdrawn under authority of this section, the next higher bidder shall be deemed to be the low bidder on the project.

## 8. SUBCONTRACTS

- (a) The Contractor shall as soon as practicable after the signing of the contract, notify the Owner in writing of the names of Subcontractors proposed for the principal parts of the Work. The Contractor shall not employ any Subcontractor that the Owner may, within a reasonable time, object to as unsuitable. The Owner will not direct the Contractor to contract with any particular Subcontractor unless provided in the specifications or Bid form.
- (b) The Owner shall, on request, furnish to any Subcontractor, if practicable, the amounts of payments made to the Contractor, the Schedule of Values and Requests for Payment submitted by the Contractor which would tend to show what amounts are due and payable by the Contractor to the Subcontractor.
- (c) The Contractor agrees that he is a fully responsible to the Owner for the acts and omissions of his Subcontractors, Suppliers, and invitees upon the site of the project and of persons either directly or indirectly employed by them, as he is for the acts and omissions of persons directly employed by him.

## 9. SEPARATE CONTRACTS

- (a) The Owner reserves the right to let other contracts in connection with the project, the work under which may proceed simultaneously with the execution of this contract. The Contractor shall afford other separate Contractors reasonable opportunity for the introduction and storage of their materials and the execution of their Work. The Contractor shall cooperate with them and shall take all reasonable action to coordinate his Work with theirs. If the Owner has listed other separate contracts in the Invitation for Bids which it expects to proceed simultaneously with the Work of the

Contractor, and has included the estimated timing of such other Contracts in the Invitation for Bids, the Contractor shall integrate the schedule of those separate contracts into his scheduling. The Contractor shall make every reasonable effort to assist the Owner in maintaining the schedule for all separate contracts. If the Work performed by the separate Contractor is defective or performed so as to prevent this Contractor from carrying out his Work according to the drawings and specifications of this contract, this Contractor shall immediately notify the Owner upon discovering such conditions.

- (b) If a dispute arises between the Contractor and separate contractors as to their responsibility for cleaning up as required by Sections 18(c) and 18(d) of these Additional Terms and Conditions, the Owner may clean up and charge the cost thereof to the respective Contractors in proportion to their responsibility. If a Contractor disputes the Owner's apportionment of clean-up costs, it shall be that Contractor's burden to demonstrate and prove the correct apportionment.
10. TAXES: The Contractor shall, without additional expense to the Owner, pay all applicable federal, state, and local taxes, fees, and assessments except the taxes, fees and assessments on the real property comprising the site of the project. If the State Building Official elects to have the local building official inspect the Work as provided by Section 36-98.1 of the *Code of Virginia*, the Owner will pay the resulting fees to the local building official.
11. PATENTS: The Contractor shall obtain all licenses necessary to use any invention, article, appliance, process or technique of whatever kind and shall pay all royalties and license fees. The Contractor shall hold and save the Owner, its officers, agents and employees, harmless from any loss or liability for or on account of the infringement of any patent rights in connection with any invention, process, technique, article or appliance manufactured or used in the performance of the Contract, including its use by the Owner, unless such invention, process, technique, article or appliance is specifically named in the specifications or drawings as acceptable for use in carrying out the Work. If, before using any invention, process, technique, article or appliance specifically named in the specifications or drawings as acceptable for use in carrying out the Work, the Contractor has or acquires information that the same is covered by letters of patent making it necessary to secure the permission of the patentee, or other, for the use of the same, he shall promptly advise the Owner. The Owner may direct that some other invention, process, technique, article or appliance be used. Should the Contractor have reason to believe that the invention, process, technique, article or appliance so specified is an infringement of a patent, and fail to inform the Owner, he shall be responsible for any loss due to the infringement.
12. INSPECTION
- a. All material and workmanship shall be subject to inspection, examination

and test by the Owner and its Project Inspector at any and all times during construction. The Project Inspector shall have authority to reject defective material and workmanship and require its correction. Rejected workmanship shall be satisfactorily corrected and rejected material shall be satisfactorily replaced with proper material without charge therefor, and the Contractor shall promptly segregate and remove the rejected material from the premises. If the Contractor fails to proceed at once with replacement of rejected material and/or the correction of defective workmanship, the Owner may, by contract or otherwise, replace such material and/or correct such workmanship and charge the cost to the Contractor, or may terminate the right of the Contractor to proceed, the Contractor and surety being liable for any damages.

- b. Job-site inspections, tests conducted on site or tests of materials gathered on site, which the Contract requires to be performed by independent testing entities, shall be contracted and paid for by the Owner. Examples of such tests are the testing of cast in-place concrete, foundation materials, soil compaction, pile installations, caisson bearings and steel framing connections. Although conducted by independent testing entities, the Owner will not contract and pay for tests or certifications of materials, manufactured products or assemblies which the Contract, codes, standards, etc. require to be tested and/or certified for compliance with industry standards such as Underwriters Laboratories, Factory Mutual or ASTM. If there are any fees to be paid for such tests and certifications, they will be paid by the Contractor. The Contractor shall also pay for all inspections, tests, and certifications which the Contract specifically requires him to perform or pay, together with any inspections and tests which he chooses to perform for his own quality control purposes. The Contractor shall promptly furnish, without additional charge, all reasonable facilities, labor and materials necessary and convenient for making such tests. Except as provided in (c) below, whenever such examination and testing finds defective materials, equipment or workmanship, the Contractor shall reimburse the Owner for the cost of reexamination and retesting.
- c. Should it be considered necessary or advisable by the Owner at any time before final acceptance of the entire Work to make an examination of any part of the Work already completed, by removing or tearing out portions of the Work, the Contractor shall on request promptly furnish all necessary facilities, labor and material to expose the Work to be tested to the extent required. If such Work is found to be defective in any respect, due to the fault of the Contractor or his Subcontractors, he shall defray all the expenses of uncovering the Work, of examination and testing, and of satisfactory reconstruction. If, however, such work is found to meet the requirements of the Contract, the actual cost of the Contractor's labor and material necessarily involved in uncovering the Work, the cost of examination and testing and Contractor's cost of material and labor necessary for replacement shall be paid to the Contractor and he shall, in

addition, if completion of the Work has been delayed thereby, be granted a suitable extension of time.

- d. The Project Inspector will recommend to the Owner that the Work be suspended when in his judgment the drawings and specifications are not being followed. Any such suspension shall be continued only until the matter in question is resolved to the satisfaction of the Owner. The cost of any such Work stoppage shall be borne by the Contractor unless it is later determined that no fault existed in the Contractor's Work.
- e. The Project Inspector has no authority to and shall not:
  - (1) Authorize deviations from the Contract Documents;
  - (2) Enter into the area of responsibility of the Contractor's superintendent;
  - (3) Issue directions relative to any aspect of construction means, methods, techniques, sequences or procedures, or in regard to safety precautions and programs in connection with the Work;
  - (4) Authorize or suggest that the Owner occupy the project, in whole or in part;
  - (5) Issue a certificate for payment.

### 13. SUPERINTENDENCE BY CONTRACTOR

- a. The Contractor shall have a competent foreman or superintendent, satisfactory to the Owner, on the job site at all times during the progress of the Work. The Contractor shall be responsible for all construction means, methods, techniques, sequences and procedures, for coordinating all portions of the Work under the Contract except where otherwise specified in the Contract Documents, and for all safety and worker health programs and practices. The Contractor shall notify the Owner, in writing, of any proposed change in superintendent including the reason therefor prior to making such change.
- b. The Contractor shall, at all times, enforce strict discipline and good order among the workers on the project, and shall not employ on the work any unfit person, anyone not skilled in the work assigned to him, or anyone who will not work in harmony with those employed by the Contractor, the Subcontractors, the Owner or the Owner's separate contractors and their subcontractors.
- c. The Owner may, in writing, require the Contractor to remove from the Work any employee the Owner deems to be incompetent, careless, not working in harmony with others on the site, or otherwise objectionable.

14. ACCESS TO WORK

The Owner, the Owner's inspectors and other testing personnel, and inspectors from the Department of Labor and Industry shall have access to the Work at all times. The Contractor shall provide proper facilities for access and inspection.

15. AVAILABILITY OF MATERIALS

If material specified in the Contract Documents is not available on the present market, alternate materials may be proposed by the Contractor for approval of the Owner.

16. CONTRACTOR'S TITLE TO MATERIALS

No materials or supplies for the work shall be purchased by the Contractor or by any Subcontractor subject to any security interest, installment or sales contract or any other agreement or lien by which an interest is retained by the seller or is given to a secured party. The Contractor warrants that he has clear title to all materials and supplies which he uses in the Work or for which he accepts payment in whole or in part.

17. WARRANTY OF MATERIALS AND WORKMANSHIP

- a. The Contractor warrants that, unless otherwise specified, all materials and equipment incorporated in the Work under the Contract shall be new, in first class condition, and in accordance with the Contract Documents. The Contractor further warrants that all workmanship shall be of the highest quality and in accordance with Contract Documents and shall be performed by persons qualified at their respective trades.
- b. Work not conforming to these warranties shall be considered defective.
- c. This warranty of materials and workmanship is separate and independent from and in addition to any of the Contractor's other guarantees or obligations in this Contract.

18. USE OF PREMISES AND REMOVAL OF DEBRIS:

- a. The Contractor shall:
  - (1) Perform his contract in such a manner as not to interrupt or interfere with the operation of any existing activity on the premises or with the Work of any Contractor;
  - (2) Store his apparatus, materials, supplies, and equipment in such orderly fashion at the site of the Work as will not unduly interfere with the progress of his Work or the Work of any other Contractor; and



- (3) Place upon the Work or any part thereof only such loads as are consistent with the safety of that portion of the Work.
- b. The Contractor expressly undertakes, either directly or through his Subcontractor(s), to effect all cutting, filling or patching of his work required to make the same conform to the drawings and specifications, and, except with the consent of the Owner, not to cut or otherwise alter the work of any other Contractor. The Contractor shall not damage or endanger any portion of the Work or premises, including existing improvements, unless called for by the Contract.
  - c. The Contractor expressly undertakes, either directly or through his Subcontractor(s), to clean up frequently all refuse, rubbish, scrap materials and debris caused by his operations, to the end that at all times the site of the work shall present a neat, orderly and workmanlike appearance. No such refuse, rubbish, scrap material and debris shall be left within the completed Work nor buried on the building site, but shall be removed from the site and properly disposed of in a licensed landfill or otherwise as required by law.
  - d. The Contractor expressly undertakes, either directly or through his Subcontractor(s), before final payment, to remove all surplus material, false work, temporary structures, including foundations thereof, plants of any description and debris of every nature resulting from his operations and to put the site in a neat, orderly condition; to thoroughly clean and leave reasonably dust free all finished surfaces including all equipment, piping, etc. on the interior of all buildings included in the Contract; and to thoroughly clean all glass installed under the Contract including the removal of all paint and mortar splatters and other defacements. If a Contractor fails to clean up at the completion of the Work, the Owner may do so and charge for costs thereof to the Contractor.
  - e. During and at completion of the Work, the Contractor shall prevent site soil erosion, the runoff of silt and/or debris carrying water from the site, and the blowing of debris off the site in accordance with the applicable requirements and standards of the Virginia Erosion and Sediment Control Handbook, latest edition, and of the Contract Documents.
  - f. The Contractor shall not operate or disturb the setting of any valves, switches or electrical equipment on the service lines to the building except by proper previous arrangement with the Owner. The Contractor shall give ample advance notice of the need for cut-offs which will be scheduled at the convenience of the Owner.

## 19. PROTECTION OF PERSONS AND PROPERTY

- a. The Contractor expressly undertakes, both directly and through its

Subcontractor(s), to take every precaution at all times for the protection of persons and property which may come on the building site or be affected by the Contractor's operation in connection with the Work.

- b. The Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work.
- c. The provisions of all rules and regulations governing safety as adopted by the Safety Codes Commission of the Commonwealth of Virginia, issued by the Department of Labor and Industry under Title 40.1 of the *Code of Virginia* shall apply to all work under this Contract.
- d. The Contractor shall continuously maintain adequate protection of all his work from damage and shall protect the Owner's property from injury or loss arising in connection with this Contract. He shall make good any such damage, injury or loss, except such as may be directly due to errors in the Contract Documents or caused by agents or employees of the Owner. He shall adequately protect adjacent property to prevent any damage to it or loss of use and enjoyment by its owners. He shall provide and maintain all passageways, guard fences, lights and other facilities for protection required by public authority, local conditions, any of the Contract Documents or erected for the fulfillment of his obligations for the protection of persons and property.
- e. In an emergency affecting the safety or life of persons or of the Work, or of the adjoining property, the Contractor, without special instruction or authorization from the Owner, shall act, at his discretion, to prevent such threatened loss or injury. Also, should he, to prevent threatened loss or injury, be instructed or authorized to act by the Owner, he shall so act immediately, without appeal. Any additional compensation or extension of time claimed by the Contractor on account of any emergency work shall be determined as provided by paragraph O. of the General Terms and Conditions.

## 20. CONTRACTOR'S RIGHT TO STOP WORK OR TERMINATE THE CONTRACT

If the Work should be stopped under any order of any court or other public authority for a period of ninety (90) days through no fault of the Contractor or of anyone employed by him, or if the Owner should fail to pay to the Contractor within thirty (30) days when no dispute exists as to the sum, then the Contractor may, upon ten (10) calendar days written notice to the Owner, stop work or terminate the Contract and recover from the Owner payment for the cost of the Work actually performed, together with overhead and profit thereon, but profit shall be recovered only to the extent that the Contractor can demonstrate that he would have had profit on the entire Contract if he had completed the Work. The Contractor may not receive profit or any other type of compensation for parts of the Work not performed. The Contractor may recover

the cost of physically closing down the job site, but no other costs of termination. The Owner may offset any claims it may have against the Contractor against the amounts due to the Contractor. In no event shall termination of the Contract by the Contractor terminate the obligations of the Contractor's surety on its payment and performance bonds.

## 21. OWNER'S RIGHT TO TERMINATE THE CONTRACT FOR CAUSE

- a. If the Contractor should be adjudged as bankrupt, or if he should make a general assignment for the benefit of his creditors, or if a receiver should be appointed on account of his insolvency, the Owner may terminate the Contract. If the Contractor should persistently or repeatedly refuse or should fail, except in cases for which extension of time is provided, to supply enough properly skilled workmen or proper materials, or if he should fail to make prompt payment to subcontractors or suppliers of material or labor, or persistently disregards laws, ordinances or the written instructions of the Owner, or otherwise be guilty of a substantial violation of any provision of the Contract, then the Owner may terminate the Contract.
- b. Prior to termination of the Contract, the Owner shall give the Contractor and his surety ten (10) calendar days written notice, during which the Contractor and/or his surety may rectify the cause of the termination. If rectified to the satisfaction of the Owner within said ten (10) days, the Owner may rescind its notice of termination. If it does not, the termination for cause shall become effective at the end of the ten day (10) notice period. In the alternative, the Owner may postpone the effective date of the termination notice, at its sole discretion, if it should receive reassurances from the Contractor and/or its surety that the causes of termination will be remedied in a time and manner which the Owner finds acceptable. If at any time more than ten (10) days after the notice of termination, the Owner determines that Contractor and/or its surety has not or is not likely to rectify the causes of termination in an acceptable manner or within the time allowed, then the Owner may immediately terminate the Contract for cause by giving written notice to the Contractor and its surety. In no event shall termination for cause terminate the obligations of the Contractor's surety on its payment and performance bonds.
- c. Notice of terminations, whether initial or given after a period of postponement, may be served upon the Contractor and the surety by mail or any other means at their last known places of business in Virginia or elsewhere, by delivery to any officer or management/supervisory employee of either wherever they may be found, or, if no such officer, employee or place of business is known or can be found by reasonable inquiry within three (3) days, by posting the notice at the job site. Failure to accept or pick up registered or certified mail addressed to the last known address shall be deemed to be delivery.

- d. Upon termination of the Contract, the Owner shall take possession of the premises and of all materials, tools and appliances thereon and finish the work by whatever method he may deem expedient. In such case the Contractor shall not be entitled to receive any further payment. If the expense of finishing the Work, including compensation for additional managerial and administrative services shall exceed the unpaid balance of the Contract price, the Contractor shall pay the difference to the Owner, together with any other expenses of terminating the Contract and having it completed by others.
- e. If it should be judicially determined that the Owner improperly terminated this Contract for cause, then the termination shall be deemed to be a termination for the convenience of the Owner.
- f. Termination of the Contract under this section is without prejudice to any other right or remedy of the Owner.

## 22. TERMINATION BY OWNER FOR CONVENIENCE

- a. Owner may terminate this Contract at any time without cause, in whole or in part, upon giving the Contractor notice of such termination. Upon such termination, the Contractor shall immediately cease Work and remove from the project site all of its labor forces and such of its materials as Owner elects not to purchase or to assume in the manner hereinafter provided. Upon such termination, the Contractor shall take such steps as Owner may require to assign to the Owner the Contractor's interest in all Subcontracts and purchase orders designated by Owner. After all such steps have been taken to Owner's satisfaction, the Contractor shall receive as full compensation for termination and assignment the following:
  - (1) All amounts then otherwise due under the terms of this Contract,
  - (2) Amounts due for work performed subsequent to the latest Request for Payment through the date of termination,
  - (3) Reasonable compensation for the actual cost of demobilization incurred by the Contractor as a direct result of such termination. The Contractor shall not be entitled to any compensation for lost profits or for any other type of contractual compensation or damage other than those provided by the preceding sentence. Upon payment of the forgoing, Owner shall have no further obligations to the Contractor of any nature.
- b. In no event shall termination for the convenience of the Owner terminate the obligations of the Contractor's surety on its payment and performance bonds.

## 23. GUARANTEE OF WORK

- a. Except as otherwise specified, all work shall be guaranteed by the Contractor against defects resulting from the use of inferior materials, equipment or workmanship for one (1) year from the date of final acceptance of the entire project by the Owner in writing. Equipment and facilities, which have seasonal limitations on their operation, shall be guaranteed for one (1) full year from the date of seasonally appropriate tests and acceptance, in writing, by the Owner.
- b. If, within the guarantee period, defects are noticed by the Owner which require repairs or changes in connection with the guaranteed work, those repairs or changes being in the opinion of the Owner rendered necessary as the result of the use of materials, equipment or workmanship, which are defective, or inferior or not in accordance with the terms of the contract, then the Contractor shall, promptly upon receipt of notice from the Owner, such notice being given not more than two weeks after the guarantee period expires, and without expense to the Owner:
  - (1) Place in satisfactory condition in every particular all of such guaranteed work and correct all defects therein;
  - (2) Make good all damage to the structure or site or equipment or contents thereof, which is the result of the use of materials, equipment or workmanship which are inferior, defective or not in accordance with the terms of the contracts; and
  - (3) Make good any work or materials or the equipment and contents of structures or the site disturbed in fulfilling any such guarantee.
- c. In any case, where in fulfilling the requirements of the Contract or any guarantee embraced in or required thereby, the Contractor disturbs any work guaranteed under contract, he shall restore such work to a condition satisfactory to the Owner and guarantee such restored work to the same extent as it was guaranteed under such other Contract.
- d. If the Contractor, after notice, fails to proceed promptly to comply with the terms of the guarantee, the Owner may have the defects corrected and the Contractor and his surety shall be liable for all expense incurred.
- e. All special guarantees applicable to definite parts of the work that may be stipulated in the specifications or other papers forming a part of the Contract shall be subject to the term of this section during the first year of the life of such special guarantee.
- f. Nothing contained in this section shall be construed to establish a period of

limitation with respect to any other obligation which the Contractor might have under the Contract Documents, including liability for defective work under Section 17 of these additional terms and conditions. This paragraph relates only to the specific obligation of the Contractor contained in this section to correct the work and does not limit the time within which his obligation to comply with the Contract Documents may be sought to be enforced, nor of the time within which proceedings may be commenced to establish the Contractor's liability with respect to his other obligations under this Contract.

- g. In the event the work of the Contractor is to be modified by another Contractor, either before or after the Final Inspection, the first Contractor shall remain responsible in all respect under the Guarantee of Work and under any other warranties provided in the contract or by law. However, the Contractor shall not be responsible for any defects in material or workmanship introduced by the Contractor modifying its work. Both the first Contractor and the Contractor making the modifications shall each be responsible solely for the work done by each. The Contractor modifying the earlier work shall be responsible for any damage to or defect introduced into the work which it is modifying. If any Contractor shall claim that another Contractor has introduced defects of materials and/or workmanship into the work of the first, it shall be the burden of the Contractor making the claim to clearly demonstrate the nature and extend of such introduced defects and the responsibility of the other Contractor. Any Contractor modifying the work of another shall have the same burden if he asserts defects to have been caused by the Contractor whose work he is modifying.

#### 24. ASBESTOS

- a. This subsection applies to projects involving existing buildings where asbestos abatement is not a part of the Work. If the Contractor discovers or inadvertently disturbs any material that may contain asbestos that has not been previously identified, that was overlooked during the removal, or which was deemed not to be friable or which was encapsulated, the Contractor shall stop work in the area containing the asbestos, secure the area, and notify the Owner immediately by telephone or in person with written notice as soon as possible. The Owner will have the suspect material sampled.

If the sample is positive and must be disturbed in the course of the Work, the Owner will have the material repaired or removed and will pay for the bulk sample analysis.

If the material disturbed is not within the Contractor's authorized Work and/or Work area or under this Contract, the Contractor will pay for all associated sampling and abatement costs.

- b. If asbestos abatement is included as a part of the Work, the Contractor shall assure that the asbestos abatement work is accomplished by those duly licensed in accordance with the specific requirements of the Contract Documents.
- c. If asbestos abatement is included as part of the Work, the licensed asbestos Subcontractor shall, in the insurance required, name the Community Services Board and the Contractor as additional insureds.

25. TRAINING, OPERATION AND MAINTENANCE OF EQUIPMENT

- a. The Contractor, in conjunction with his Subcontractors and Suppliers, shall provide the Owner's operations and maintenance personnel with instruction and training in the proper operation and maintenance of the equipment and related controls provided or altered in the Work.
- b. The Contractor shall provide the Owner with a minimum of two (2) copies of operating, maintenance and parts manuals for all equipment provided in the project. Further specific requirements may be indicated in the specifications.

26. DRUG FREE WORKPLACE: The Contractor acknowledges and certifies that it understands that the following acts by the Contractor, its employees, and/or agents performing services on state property are prohibited.

- a. The unlawful manufacture, distribution, dispensing, possession or use of alcohol or other drugs; and
- b. Any impairment or incapacitation from the use of alcohol or other drugs (except) the use of drugs for legitimate medical purposes.

The Contractor further acknowledges and certifies that it understands that a violation of these prohibitions constitutes a breach of contract and may result in default action being taken by the CSB in addition to any criminal penalties that may result from such conduct.

## **APPENDIX E - TERMS AND CONDITIONS**

### **SECTION IV**

#### **SPECIAL TERMS AND CONDITIONS** **INFORMATION TECHNOLOGY GOODS AND SERVICES**

The following is a list of special terms and conditions that may be used at the buyer's discretion in information technology IFBs and RFPs as appropriate. The Community Services Board's General Terms & Conditions, any other special terms and conditions as listed in previous sections of this appendix, and any specific terms developed by the buyer should also be included as needed.

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1. **CERTIFICATION TESTING PERIOD - SYSTEMS:** The system specified in the contract shall be considered ready for testing upon receipt of documentation from the contractor that a successful system audit or diagnostic test was performed at the site demonstrating that the system meets the minimum design/performance capabilities stipulated in the purchase agreement. The \_\_\_\_ day testing period shall commence on the next calendar day following receipt of this documentation. Upon request, the procuring agency will provide written confirmation of its acceptance following successful completion of the certification period. Such acceptance shall not be conclusive of complete conformance in all respects to the contract specifications and other requirements, or the nonexistence of potential latent defects.

**When Used:** In solicitations for computer systems requiring the installation of multiple components and configuration prior to system operation. **NOTE:** Specific certification criteria should be stated either in the specification or as a part of this provision.

**CERTIFICATION TESTING PERIOD - HARDWARE:** Equipment ordered herein shall be subject to inspection and a 30-day testing period by the procuring agency. Contractor equipment which is found to not meet the specifications or other requirements of the purchase agreement may be rejected and returned to the vendor at no cost (including return transportation) by the procuring agency. Unless otherwise notified or mutually agreed, acceptance shall become effective at the end of the 30-day testing period. Such acceptance shall not be conclusive of complete conformance in all respects to the contract specifications and other requirements, or the nonexistence of potential latent defects.

**When Used:** In solicitations for computer hardware requiring the integration of multiple components for utilization. Specific certification/performance criteria should be stated either in the specification or as a part of this provision.

2. **CONFIDENTIALITY (CSB):** The Community Services Board agrees that neither it nor its employees, representatives, or agents shall knowingly divulge any proprietary information with respect to the operation of the software, the technology embodied therein, or any other trade secret or proprietary information related thereto, except as specifically authorized by the contractor in writing or as required by the Freedom of Information Act or similar law. It shall be the contractor's responsibility to fully comply with Section 2.2-4342 D of the Code of Virginia. All trade secret or proprietary information must be identified in writing or other tangible form and conspicuously labeled as "proprietary" either prior to or at the time of submission to the CSB.

**When Used:** Solicitations for commercially developed software that has been patented, copyrighted, otherwise protected by law, or when it is anticipated the vendor may claim that the software contains trade secrets or proprietary information.

**CONFIDENTIALITY (Contractor):** The contractor assures that information and

data obtained as to personal facts and circumstances related to patients or clients will be collected and held confidential, during and following the term of this agreement, and will not be divulged without the individual's and the CSB's written consent. Any information to be disclosed, except to the CSB, must be in summary, statistical, or other form which does not identify particular individuals.

Contractors and their employees working on this project will be required to sign the Confidentiality statement in this solicitation.

**When Used:** Solicitations for commercially developed software that has been patented, copyrighted, otherwise protected by law, or when it is anticipated the vendor may claim that the software contains trade secrets or proprietary information.

3. **DEMONSTRATIONS:** By submitting a bid or proposal, the bidder or offeror certifies that the specified equipment is in productive use and capable of demonstration in the proposed configuration. The CSB reserves the right to require bidders or offerors to demonstrate the functionality of proposed equipment to its satisfaction prior to making an award decision. Such demonstration is intended to show that a vendor's products will perform in a completely satisfactory manner and that they will meet or exceed the performance specifications contained in the solicitation. Failure by a vendor to promptly comply with a request for demonstration could result in their bid being rejected. Failure to reject shall not relieve the vendor of its obligation to fully comply with all requirements of the contract.

**When Used:** Equipment purchases in which the agency has a concern that proposed equipment may not be currently available or capable of performing as promised.

4. **DEFINITION – EQUIPMENT:** As used herein, the terms equipment, product, or system shall include hardware and software (when applicable) and any materials or supporting documentation. Such documentation may include but is not limited to: users' guides, operations manuals with part lists, copies of all applicable warranties, and any other pertinent information necessary for the proper operation and maintenance of the equipment being acquired.

**When Used:** In solicitations for hardware and software to assure that the CSB receives all supporting materials needed for utilization and maintenance of the purchased equipment.

**DEFINITION – SOFTWARE:** As used herein, the terms software, product, or software products shall include all related materials and documentation whether in machine readable or printed form.

**When Used:** In solicitations for software that the CSB receives all materials, including source code (when appropriate), supporting documentation, and user's information related to utilization of the software being acquired.

5. **EQUIPMENT ENVIRONMENT:** Environmental specifications for any equipment to be delivered under the resulting contract shall be furnished in writing along with the vendor's bid or proposal, should any such requirements be applicable. These specifications must be in sufficient detail to permit all installed equipment to function efficiently from an environmental perspective. Unless otherwise stated in the solicitation, it will be the procuring agency's responsibility to prepare the site at its own expense to meet the environmental specifications provided.

**When Used:** For equipment purchases when it is anticipated that the equipment must function in a controlled environment, i.e., a regulated temperature or humidity range, or the absence of electromagnetic interference.

6. **EXCESSIVE DOWNTIME:** Equipment or software furnished under the contract shall be capable of continuous operation. Should the equipment or software become inoperable for a period of more than 24 hours, the contractor agrees to pro-rate maintenance charges to account for each full day of inoperability. The period of inoperability shall commence upon initial notification. In the event the equipment or software remains inoperable for more than \_\_\_\_ consecutive calendar days, the contractor shall promptly replace the equipment or software at no charge upon request of the procuring agency. Such replacement shall be with new, unused product(s) of comparable quality, and must be installed and operational within \_\_\_\_ days following the request for replacement.

**When Used:** In solicitations for hardware or software to be used on a continuous basis to support essential activities, and the contractor is responsible for providing full service maintenance.

7. **LIMITATION OF USE:** The Community Services Board's right to use computer software developed entirely at private expense may be limited by the contractor as stipulated in this contract. Notwithstanding any provision to the contrary however, the CSB shall have at a minimum: unlimited use of the software on the equipment for which it is purchased; use of the software on a secondary system for backup purposes should the primary system become unavailable, malfunctions, or is otherwise rendered inoperable; use of the software at another CSB site should the system be entirely transferred to that location; the right to make a backup copy for safekeeping; the right to modify or combine the software with other programs or materials at the CSB's risk; and the right to reproduce any and all documentation provided such reproduction is for the sole use of the CSB. These rights are perpetual and irrevocable; in the event of any actual or alleged breach by the CSB, the contractor's sole remedy shall be to pursue a monetary claim in accordance with Section 2.2-4363 of the Code of Virginia.

**When Used:** In solicitations which will result in the acquisition of commercially developed software, when the agency intends to use such software to support critical activities or functions.

8. **MAINTENANCE:** Upon expiration of the specified warranty period and at the

Community Services Board's option, the contractor shall provide up to additional one-year periods of on-site maintenance (including labor, parts, and travel) at the prices set forth in the pricing schedule. Maintenance shall not include external electrical work, providing supplies, and adding or removing accessories not provided for in the contract. Maintenance shall also not include repairs of damage resulting from: acts of God, transportation between state locations, negligence by state personnel, or other causes not related to ordinary use in the production environment in which installed. Each successive year of maintenance may be ordered by the CSB in writing at least \_\_\_\_ days prior to expiration of the existing maintenance period.

**When Used:** In solicitations for computer hardware and software, when maintenance services beyond the basic warranty period are desired, and such extended maintenance service is included in the solicitation's pricing schedule. This clause should be used in conjunction with one of the "service period" clauses. **NOTE:** The specific maintenance requirements or duties must be stated either in the specifications or as a separate condition of the contract.

9. **NEW PRODUCTS:** Unless otherwise expressly stated in this solicitation, any equipment furnished under the contract shall be new, unused equipment. Any software provided under the contract shall be the latest version available to the general public as of the due date of this solicitation.

**When Used:** For purchases where used, reconditioned, or remanufactured equipment and components or other than the latest version of a software package is not acceptable.

10. **NON-VISUAL ACCESS TO TECHNOLOGY:** All information technology which, pursuant to this Agreement, is purchased or upgraded by or for the use of the CSB shall comply with the following non-visual access standards from the date of purchase or upgrade until the expiration of this Agreement.

- (i) effective, interactive control and use of the Technology shall be readily achievable by non-visual means.
- (ii) The Technology equipped for non-visual access shall be compatible with information technology used by other individuals with whom any blind or visually impaired user of the Technology interacts;
- (iii) Nonvisual access technology shall be integrated into any networks used to share communications among employees, program participants or the public; and
- (iv) The technology for non-visual access shall have the capability of providing equivalent access by non-visual means to telecommunications or other interconnected network services used by persons who are blind or visually impaired.

Compliance with the foregoing non-visual access standards shall not be required if the CSB Executive Director determines that (i) the Technology is not available with non-visual access because the essential elements of the Technology are visual and (ii) non-visual equivalence is not available.

Installation of hardware, software or peripheral devices used for non-visual access is not required when the Technology is being used exclusively by individuals who are not blind or visually impaired, but applications programs and underlying operating systems (including the format of the data) used for the manipulation and presentation of information shall permit the installation and effective use of non-visual access software and peripheral devices.

If requested, the Contractor must provide a detailed explanation of how compliance with the foregoing non-visual access standards is achieved and a validation of concept demonstration.

The requirements of this Paragraph shall be construed to achieve full compliance with the Information Technology Access Act, Sections 2.1-3500 through 2.1-3504 of the Code of Virginia.

**When Used:** In all contracts for the procurement of electronic information processing hardware and software, including telecommunications. The CSB Executive Director may, with respect to non-visual access software or peripheral devices, approve the exclusion of this clause only to the extent that the cost of such software or devices for the CSB would increase the total cost of the procurement by more than five percent.

11. **OPERATIONAL COMPONENTS:** Unless otherwise requested in the solicitation, stated equipment prices shall include all cables, connectors, interfaces, documentation for all components, and any other items necessary for full systems operation at the user site. This does not include consumable supplies such as paper, tapes, disks, etc., unless such supplies are expressly identified in the pricing schedule.

**When Used:** For system purchases requiring incidental hardware for the interconnection of system components.

12. **OWNERSHIP OF INTELLECTUAL PROPERTY:** All copyright and patent rights to all papers, reports, forms, materials, creations, or inventions created or developed in the performance of this contract shall become the sole property of the Community Services Board. On request, the contractor shall promptly provide an acknowledgment or assignment in a tangible form satisfactory to the Commonwealth to evidence the CSB's sole ownership of specifically identified intellectual property created or developed in the performance of the contract.

**When Used:** For purchases of software or applications development services which result in deliverables that were developed to specifically meet the state's performance requirements, or when state employees will participate in the

**creation or invention of any copyright or patentable material.**

13. **PRODUCT SUBSTITUTION:** During the term of any contract resulting from this solicitation, the vendor is not authorized to substitute any item for that product and/or software identified in the solicitation without the prior written consent of the Contracting Officer whose name appears on the front of this solicitation, or their designee.

**When Used:** Purchases where the vendor will be responsible for maintenance after the sale, and the agency desires to protect against item substitutions.

14. **QUALIFIED REPAIR PERSONNEL:** All warranty or maintenance services to be performed on the items specified in this solicitation as well as any associated hardware or software shall be performed by qualified technicians properly authorized by the manufacturer to perform such services. The Community Services Board reserves the right to require proof of certification prior to award and at any time during the term of the contract.

**When Used:** In solicitations for hardware or software when the performance of warranty/maintenance must be performed by qualified personnel so as not to invalidate any warranty or support provided by the product manufacturer.

15. **RELOCATION OF EQUIPMENT:** Should it become necessary to move equipment covered by the contract to another location, the Community Services Board reserves the right to do so at its own expense. If contractor supervision is required, the CSB will provide prior written notice of the move at least thirty days in advance, in which case the contractor shall provide the required services and be reasonably compensated by the CSB. Both the compensation to be paid and any adjustment to the maintenance terms resulting from the move shall be as mutually agreed between the parties. Regular maintenance charges shall be suspended on the day the equipment is dismantled and resume once the equipment is again certified ready for operational use.

**When Used:** In solicitations for the acquisition of major computer components or systems for which the contractor is normally the sole provider of maintenance services.

16. **RENEWAL OF MAINTENANCE:** Maintenance of the hardware or software specified in the resultant contract may be renewed by the mutual written agreement of both parties for an additional \_\_\_\_ one-year period(s), under the terms and conditions of the original contract except as noted herein. Price changes may be negotiated at time of renewal; however, in no case shall the maintenance costs for a succeeding one-year period exceed the prior year's contract price(s), increased or decreased by no more than the percentage increase or decrease in the \_\_\_\_\_ category of the CPI-W section of the US Bureau of Labor Statistic's Consumer Price Index, for the latest twelve months for which statistics are available.

**When Used:** In solicitations for hardware or software where extended maintenance beyond the warranty period is not included in the pricing schedule, but the agency wishes to retain the option to acquire such maintenance services with a pre-established cap on the future cost of such services.

17. **REPAIR PARTS:** In the event that the performance of maintenance services under the contract results in a need to replace defective parts, such items may only be replaced by new parts. In no instance shall the contractor be permitted to replace defective items with refurbished, remanufactured, or surplus items without prior written authorization of the Community Services Board.

**When Used:** In solicitations for computer hardware that require maintenance after the sale, and the agency wishes to have defective parts replaced only by new parts.

18. **SERVICE PERIOD (EXTENDED):** Due to the criticality of the applications for which the equipment and/or software is purchased, the contractor shall provide 24 hours a day, 7 days a week, maintenance support, including state holidays. On-site response time shall be within \_\_\_\_ hours following initial notification. All necessary repairs or corrections shall be completed within \_\_\_\_ hours of the initial notification.

**When Used:** In solicitations for hardware or software when it is essential that the equipment remain in continuous operation due to the criticality of the process or function for which it was obtained.

19. **SERVICE PERIOD (ROUTINE):** Contractor shall provide 24 hour toll free phone support with a \_\_\_\_ hour return call response time. On-site maintenance services shall carry a \_\_\_\_ hour response time following initial notification and be available during the normal working hours of 8 A.M. to 5 P.M. Monday through Friday, excluding state holidays. All necessary repairs or corrections shall be completed within \_\_\_\_ hours of the initial notification.

**When Used:** In solicitations for hardware or software which require regular maintenance support but which are not of such a critical nature as to require expeditious response times or after hours support.

20. **SERVICE REPORTS:** Upon completion of any maintenance call, the contractor shall provide the agency with a signed service report that includes, at a minimum: a general statement as to the problem, action taken, any materials or parts furnished or used, and the number of hours required to complete the repairs.

**When Used:** In solicitations requiring maintenance services when the agency intends to maintain detailed service records. This clause should always be included in any solicitation where maintenance is to be performed on a time and materials basis.

21. **SOFTWARE UPGRADES:** The Community Services Board shall be entitled to any and all upgraded versions of the software covered in the contract that becomes available from the contractor. The maximum charge for upgrade shall not exceed the total difference between the cost of the CSB's current version and the price the contractor sells or licenses the upgraded software under similar circumstances.

**When Used:** In solicitations for the purchase of computer software when the agency desires the opportunity to acquire future upgrades as they become available, and the availability of upgrades is not a condition stated elsewhere in the contract.

22. **SOFTWARE DISPOSITION:** Unless otherwise instructed by the contractor, the Community Services Board shall render unusable all copies of software acquired under the contract within thirty days of termination of its license, except that the CSB does reserve the right to retain one copy of the software for archival purposes when appropriate.

**When Used:** In solicitations for software when it is anticipated that the software license will only be maintained for a limited period of time.

23. **SOURCE CODE:** In the event the contractor ceases to maintain experienced staff and the resources needed to provide required software maintenance, the Community Services Board shall be entitled to have, use, and duplicate for its own use, a copy of the source code and associated documentation for the software products covered by the contract. Until such time as a complete copy of such material is provided, the CSB shall have exclusive right to possess all physical embodiments of such contractor owned materials. The rights of the CSB in this respect shall survive for a period of twenty years after the expiration or termination of the contract. All lease and royalty fees necessary to support this right are included in the initial license fee as contained in the pricing schedule.

**When Used:** In solicitations for the purchase of computer software when it is necessary to assure either the availability of program support or the opportunity to provide internal program support.

24. **TERM OF SOFTWARE LICENSE:** Unless otherwise stated in the solicitation, the software license(s) identified in the pricing schedule shall be purchased on a perpetual basis and shall continue in perpetuity. However the Community Services Board reserves the right to terminate the license at any time, although the mere expiration or termination of this contract shall not be construed as an intent to terminate the license. All acquired license(s) shall be for use at any computing facilities, on any equipment, by any number of users, and for any purposes for which it is procured. The CSB further reserves the right to transfer all rights under the license to another CSB or state or local agency to which some or all of its functions are transferred.



**When Used:** In all software procurements when the agency intends to acquire unlimited rights to use computer software for an indefinite amount of time.

25. **THIRD PARTY ACQUISITION OF SOFTWARE:** The contractor shall notify the procuring agency in writing should the intellectual property, associated business, or all of its assets be acquired by a third party. The contractor further agrees that the contract's terms and conditions, including any and all license rights and related services, shall not be affected by the acquisition. Prior to completion of the acquisition, the contractor shall obtain, for the Community Services Board's benefit and deliver thereto, the assignee's agreement to fully honor the terms of the contract.

**When Used:** In solicitations for commercial software when it is necessary to maintain continuity of support even in the event of sell or transfer of rights to another party.

26. **TITLE TO SOFTWARE:** By submitting a bid or proposal, the bidder or offeror represents and warrants that it is the sole owner of the software or, if not the owner, that it has received all legally required authorizations from the owner to license the software, has the full power to grant the rights required by this solicitation, and that neither the software nor its use in accordance with the contract will violate or infringe upon any patent, copyright, trade secret, or any other property rights of another person or organization.

**When Used:** All solicitations for the procurement of computer software for the purpose of assuring the agency only acquires software from an entity legally authorized to market it.

27. **WARRANTY AGAINST SHUTDOWN DEVICES:** The contractor warrants that the equipment and software provided under the contract shall not contain any lock, counter, CPU reference, virus, worm, or other device capable of halting operations or erasing or altering data or programs. Contractor further warrants that neither it, nor its agents, employees, or subcontractors shall insert any shutdown device following delivery of the equipment and software.

**When Used:** In solicitations for hardware or software when the agency wishes to protect both its purchase and existing information resources from possible damage or destruction due to computer viruses or other shutdown devices.

28. **WARRANTY OF SOFTWARE:** The contractor warrants the operation of all software products for a period of \_\_\_\_ months from the date of acceptance. During the warranty period, the contractor shall provide \_\_\_\_ hour toll free phone support and all patches, fixes, revisions, updates, upgrades, and minor releases to both the software and its supporting documentation. In addition, the contractor shall provide a two hour return call response time and complete all necessary patches/fixes within \_\_\_\_ hours of initial notification.

**When Used:** In software purchases where the software will be used to support critical agency activities that can not endure extended periods of downtime.  
**NOTE:** The warranty requirements or duties are not cited and need to either be added to this clause or included in the specification.

29. **NONVISUAL ACCESS TO TECHNOLOGY:** All information technology which, pursuant to this Agreement, is purchased or upgraded by or for the use of the Community Services Board (the "Technology") shall comply with the following nonvisual access standards from the date of purchase or upgrade until expiration of this Agreement:

- (I) effective, interactive control and use of the Technology shall be readily achievable by nonvisual means;
- (II) the Technology equipped for nonvisual access shall be compatible with information technology used by other individuals with whom any blind or visually impaired user of the Technology interacts;
- (III) nonvisual access technology shall be integrated into any networks used to share communications among employees, program participants or the public; and
- (IV) the technology for nonvisual access shall have the capability of providing equivalent access by nonvisual means to telecommunications or other interconnected network services used by persons who are not blind or visually impaired.

Compliance with the foregoing nonvisual access standards shall not be required if the head of the using purchasing agency determines that (I) the Technology is not available with nonvisual access because the essential elements of the Technology are visual and (ii) nonvisual equivalence is not available.

Installation of hardware, software or peripheral devices used for nonvisual access is not required when the Technology is being used exclusively by individuals who are not blind or visually impaired, but applications programs and underlying operating systems (including the format of the data) used for the manipulation and presentation of information shall permit the installation and effective use of nonvisual access software and peripheral devices.

If requested, the Contractor must provide a detailed explanation of how compliance with the foregoing nonvisual access standards is achieved and a validation of concept demonstration.

The requirements of this Paragraph shall be construed to achieve full compliance with the Information Technology Access Act, Sections 2.1-807 through 2.1-811 of the Code of Virginia.

• **When Used:** In all contracts for the procurement of electronic information processing hardware and software, including telecommunications. The head of the Community Services Board may, with respect to nonvisual access software or peripheral devices, approve the exclusion of this clause only to the extent that the cost of such software or devices for the using agency would increase the total cost of the procurement by more than five percent.

30. **LATEST SOFTWARE VERSION:** Any software product(s) provided under the contract shall be the latest version available to the general public as of the due date of this solicitation.

\* **When Used:** For purchases where other than the latest available version of a software package is not acceptable.